IMPLEMENTATION OF THE HELSINKI ACCORDS

HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDREDTH CONGRESS

FIRST SESSION

THE MIROSLAV MEDVID INVESTIGATION

MAY 14, 1987

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PUBLIC HEARING ON THE MIROSLAV MEDVID INVESTIGATION

THURSDAY, MAY 14, 1987

COMMISSION ON SECURITY AND
COOPERATION IN EUROPE,
Washington, DC.

The Commission met, pursuant to notice, in room 538 Dirksen Senate Office Building, Washington, DC, at 10 a.m., Representative Steny H. Hoyer (Chairman) and Senator Dennis DeConcini (Co-chairman) presiding.

In attendance from the Commission: Representatives Edward Feighan and Don Ritter, Senator Harry Reid, and former Commissioner Senator Gordon J. Humphrey.

Also in attendance: Paul Lamberth, Project Director, Barbara Jeanne Cart, staff attorney, Frank G. Heath, staff investigator, Michael R. Hathaway, staff counsel, Mildred J. Donahue, administrative assistant, Veronica Crowe, research assistant, Howard Zonana, M.D., Loren Roth, M.D., Ezra Griffith, M.D., and Sandra Bisbey, paralegal.

OPENING STATEMENT OF CHAIRMAN HOYER

Chairman HOYER. We are going to start the hearing. There is a vote currently occurring in the Senate, and I would imagine that as soon as that vote is completed, hopefully in the next 15 minutes or so, we will have other Members of the Senate join us.

I want to welcome our witnesses here and the public and make an opening statement of my own, and then I will recognize our Ranking Minority Member from the House, Don Ritter, for an opening statement.

On October 25, 1985, a young Ukrainian seaman named Miroslav Medvid jumped overboard from the Soviet merchant ship only to be forceably returned by U.S. officials. Later, higher U.S. officials, upon discovery of the circumstances, attempted to ascertain Medvid's intentions.

Responding to this situation, the U.S. Senate last year adopted an amendment to S. Res. 353 to create an investigation into the Medvid incident. This investigation was begun while Senator D'Amato was Chairman and I was Cochairman of this Commission. Together with the input of Senator Humphrey, who sponsored the Medvid Resolution, we decided to undertake the mandated investigation, whose final report we will receive today.

I might say that this investigation was uniquely assigned to the Helsinki Commission because of the perception of Senator Dole and others in the Senate, after discussions with Senator D'Amato and myself, that the issues raised by the Medvid incident did, in fact,

concern not only the rights of Mr. Medvid, but also the performance of the U.S. Government as it relates to those who seek asylum in the United States.

The investigation's major findings will not come as a surprise, I believe, to anyone familiar with the published record of the Medvid incident. The border patrol agents who first met Miroslav Medvid did not handle the case properly. As a result, Medvid, our conclusions will reflect, was effectively denied his rights.

One of the major questions before the Commission, and indeed, the Congress and the executive branch, today is: What can we do to prevent a repeat of the Medvid incident in the future? What mistakes, if any, did U.S. officials make? Can the laws be changed so that the chances of this incident occurring again are significantly reduced?

In an effort to present a thorough, professional, objective report, the Commission hired a staff of experienced and able investigators, assistants and consultants, and it has been our intent to respond to all of the directives and specific questions raised by the Senate Resolution mandating this investigation.

Before I introduce our panelists who will present the report and who are the staff and the consultants to the staff of the investigative arm of the Commission, let me recognize now for an opening statement, the ranking Member of the Commission, Mr. Ritter.

[Prepared statement of Representative Don Ritter from Pennsylvania follows:]

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Hearing

Involuntary Repatriation by the United States of Soviet and Soviet-Bloc Nationals (The Miroslav Medvid and other Cases)

May 14, 1987

Statement of Congressman Don Ritter

Thank you Mr. Chairman. It is with a heavy heart that I welcome the investigative staff today. Reviewing the Executive Summary of their investigation, we find that not only did confusion and incompetence reign during the tragic time when Miroslav Medvid sought asylum, but that administration officials violated the law in their misdealings.

It's hard to believe that Border Patrol Agent Ernest Spurlock could have allowed Mr. Medvid, who he knew had escaped from a Soviet ship, citing "political and moral reasons" in his own report, to be dragged back to that same Soviet ship, kicking and screaming, by at least six Soviet seamen. Mr. Spurlock's actions were well beyond poor judgment.

The report continues, saying that "initial steps to remove Medvid from the ship were appropriate. However, it was determined that Medvid was unconscious and not in a state to be removed from his ship. Immigration and Naturalization Service (INS)/Border Patrol deferred to situational aspects prohibiting his immediate transfer into U.S. custody. As a result, the opportunity was lost and Medvid was allowed to remain on board the ship far too long."

These troubling misdealings were repeated only a few days later when, after public opinion and Congressional outrage grew to great proportions, U.S. officials upon examining the obviously drugged Medvid, failed to order critical tests of body fluids to determine exactly what had been done to him.

Then, there was the improper transfer of situational authority from INS to the State Department. This confusion and the subsequent decision to ignore the Senate subpoena to have Mr. Medvid appear before the Senate Agriculture Committee was a direct violation of law.

The Executive Summary states that , "White House, National Security Council, Department of State and Department of Justice officials deviated from constitutionally and Congressionally mandated procedures. This failure to follow prescribed procedures constitutes a violation of law."

Mr. Chairman, my heart is not only heavy . . . I am angry. I'm angry because there were so many of us in the House and in the Senate, including many of my colleagues here today, who worked day after day, struggling to keep Medvid here, to keep the ship from leaving. Our own government wasn't listening to us or to the American people. They weren't heeding the widely subscribed-to Congressional resolutions and the tremendous, desperate energies being expended.

Finally, Mr. Chairman, I'm embarrassed for those who made these decisions and I feel sorry for them. They have to live with their consciences, they have to get up every morning with the knowledge of what they did, or better yet, with what they should have done.

Chairman HOYER. Thank you, Mr. Ritter.
At this point I would like to accept for the record Cochairman DiConcini's prepared opening statement.

CO-CHAIRMAN DeCONCINI'S OPENING STATEMENT FOR MAY 14th MEDVID HEARING

THANK-YOU MR. CHAIRMAN. I JOIN YOU IN WELCOMING OUR WITNESSES AND THE OTHER COMMISSIONERS TO THIS VERY IMPORTANT HEARING.

THE MEDVID INCIDENT HAS LEFT MANY NAGGING DOUBTS IN THE MINDS OF THE AMERICAN PEOPLE AND THE CONGRESS ABOUT OUR POLICIES AND PROCEDURES FOR HANDLING CASES OF THIS NATURE.

THE CONGRESS TOGETHER WITH THE EXECUTIVE AND THE JUDICIARY BRANCHES HAS A FUNDAMENTAL RESPONSIBILITY UNDER OUR CONSTITUTION TO SAFEGUARD THE RIGHTS OF THOSE WHO WISH TO SEARCH FOR LIBERTY AND THE PURSUIT OF HAPPINESS ON OUR SHORES. ALL OF THOSE WHO LIVE OR SEEK TO LIVE IN AMERICA MUST HAVE CONFIDENCE THAT WE TAKE OUR MANDATE SERIOUSLY. WE HAVE AN OBLIGATION TO CAREFULLY SCRUTINIZE OUR POLICIES, OUR LAWS AND THE PROCEDURES FOR THEIR IMPLEMENTATION TO ENSURE THAT EXISTING MECHANISMS FOR EVALUATING POSSIBLE ASYLUM CASES ARE TRULY ADEQUATE.

IT IS IN THIS CONTEXT THAT THE MEDVID INCIDENT SHOULD BE REVIEWED. THE REPORT, WHICH HAS BEEN PREPARED FOR THE COMMISSION, SEEKS TO PROVIDE A FOUNDATION OF FACTS AND RECCOMENDATIONS WHICH WILL ASSIST CONGRESS AND THE RELEVANT AGENCIES IN 1) ADDRESSING POSSIBLE INFRACTIONS AGAINST EXISTING LAW 2) CORRECTING WEAKNESSES IN CURRENT POLICY, STATUTE AND PROCEDURE.

THE INVESTIGATING TEAM HAS SPENT THE PAST YEAR RECONSTRUCTING THE EVENTS SURROUNDING THE MEDVID CASE. IN KEEPING WITH THEIR MANDATE THEY HAVE EXAMINED THE ACTIONS OF THOSE INVOLVED AGAINST ALLEGATIONS OF CONSPIRACY, SECRET GRAIN AGREEMENTS, FOREIGN POLICY INFLUENCES AND INCOMPETENCE. I AM LOOKING FORWARD TO HEARING THE DETAILS OF THEIR FINDINGS SO THAT WHATEVER FOLLOW-ON ACTION IS INDICATED CAN BE TAKEN.

WE CANNOT PERMIT THE PATTERN OF DOUBT ABOUT OUR GOVERNMENT'S ABILITY TO DEAL JUDICIOUSLY WITH THESE TYPES OF INCIDENTS TO PERSIST. IF WE ALLOW, EVEN ONCE, AN INDIVIDUAL TO BE CHEATED OUT OF THE OPPORTUNITY TO EXERCISE HIS INALIENABLE RIGHTS, WE HAVE COMPROMISED OUR COUNTRY'S MOST PRECIOUS QUALITY.

Chairman HOYER. And now I recognize a former member of the Commission, whose initiative led to the Senate Resolution, which called for the Commission's investigation, Senator Gordon Humphrey of New Hampshire.

STATEMENT OF SENATOR GORDON J. HUMPHREY OF NEW HAMPSHIRE

Senator HUMPHREY. Thank you, Mr. Chairman.

I congratulate you and the Commission, members of the Commission and the staff, who have been involved in the investigation, for having done an outstanding, conscientious and thorough job. I regret that in some instances, as I understand it, the administration claims executive privilege with regard to certain records of certain meetings, so that ultimately it would appear that the investigation is unable to come to a conclusion as to what persons violated the law with respect to failure to retain an alien wanted in connection with the investigation. Apparently we will never be able to know which official or officials violated the law.

But the report of the Commission makes it clear that the laws of the United States were, in fact, violated in the handling of this Medvid case, and not only at the lower echelons, but, indeed, at the higher echelons of our Government.

The investigation determined, among a number of other things, that some of the suspicions, the dark suspicions, which were rampant at the time were not justified, and in that likewise the Commission in their investigation performed a very useful service. It is important to the American people to have put these rumors and allegations to rest, that, indeed, there was no conspiracy.

On the other hand, the official charge of the investigation, the task of the investigation, to cite the Senate Resolution which funded this investigation, is to conduct an investigation to determine whether any officer or employee of the United States violated any law of the United States or any State or local law, including statute, regulation, ordinance, et cetera, in connection with the defection attempt of Miroslav Medvid. That is the official charge, whether any officer or employee violated any law.

In the conclusion of the report, the investigation determined that laws were violated. The report is not yet to the point of naming who the violators were, but it is important for the public to know and for the administration to know, and hopefully acknowledge, that laws were violated, not just at the lower echelons by amateur bungling, but by decisions at the highest levels in the last few days of this tragic episode.

I will close my brief statement by congratulating the Commission and the investigators for having done an outstanding job and, more importantly, having served the public and the public trust in a very excellent way.

Chairman HOYER. Thank you.

Mr. Feighan, the newest member of the Commission. Mr. Feighan, from Ohio.

STATEMENT OF REPRESENTATIVE EDWARD F. FEIGHAN FROM OHIO

Mr. FEIGHAN. Thank you, Mr. Chairman.

I would like to commend the Commission's investigative staff for its exceptionally professional report on the Miroslav Medvid incident.

I would like to align myself with the comments of my colleague from Pennsylvania, Mr. Ritter. I think that he very articulately expressed the frustration and, indeed the anger of members of this Commission, as well as Members of the Congress, at the behavior of certain officials and agencies of the Federal Government surrounding the Medvid case.

The fundamental conclusion that this report brings to us is that the Miroslav Medvid case must never be repeated—ever. Individuals such as Miroslav Medvid must be provided the full opportunity to have their wishes and dreams for freedom fulfilled.

I think that the Commission's investigative staff's work has brought us findings that are balanced and recommendations that are very constructive. I sincerely hope that the agencies affected by these recommendations will embrace them, endorse them, and implement them as soon as possible, to insure that what happened to Miroslav Medvid does not happen again.

Thank you, Mr. Chairman.

Chairman HOYER. Thank you, Mr. Feighan.

I would now like to introduce the members of the staff, all of whom have been congratulated for the substance of their work, and I would like to join in with that. They have worked closely with the Commission and the staff, and have produced a document that I think is balanced, but does not in any way fail to address the important issues that were raised by this entire incident.

First, I would like to introduce Paul Lamberth, who is the chief investigative officer on the project and project director. He has prior Federal Government service as a member of the U.S. Marine Corps, as an FBI agent, and as manager of the Inspector General's operation in two of our departments. He will testify about the general investigative process, as well as the findings and conclusions and key factual issues in the investigation.

In addition, we will have Mr. Frank Heath, also a staff investigator, who served as a captain in the U.S. Air Force and as a special agent of the FBI, and who has been employed since 1982 as an investigative security consultant to a number of Fortune 500 corporations, specializing in bank and computer fraud investigations. He will testify about the Medvid imposter theory, the drugging issue, including forensic examination of evidentiary materials.

Dr. Howard Zonana, consultant to the Commission, is an associate professor of psychiatry at G.W. University and director of the law and psychiatry training program at Yale.

Last, Barbara Jeanne Cart, attorney, former member of the State police in Arkansas, who worked as staff counsel for the Senate Permanent Subcommittee on Investigations for 4½ years before coming to the Commission, will discuss the legal infractions identified as a result of the investigation.

At this time I intend to proceed, Mr. Lamberth, by having each one of you make your presentations, and after all four of you have made your presentations, I will recognize the members of the Commission for such questions as they might have.

Mr. Lamberth.

STATEMENT OF PAUL D. LAMBERTH, PROJECT DIRECTOR

Mr. LAMBERTH. Thank you very much, Mr. Chairman. I must say "thank you" for the kind words from all of you.

This has been a rare opportunity, unique in my many years of government service, and I appreciate this chance to have been of some service to you.

I will first briefly recite the Medvid incident. I do not want to belabor the story, which is well known to most of us here, but I do want to go through it quickly to set the scene for the testimony that will follow, and I can perhaps enlighten you on some aspects of the story that have not been so well known before.

The Miroslav Medvid incident started in New Orleans on October 24, 1985, when that young Ukrainian seaman jumped into the Mississippi River, at about the hour that darkness was falling, swam to shore and encountered the first U.S. citizen, in the person of Joe Wyman, a local jeweler in Belle Chasse, Louisiana, a suburb of New Orleans.

Mr. Wyman and his nephew talked with this seaman, but were unable to communicate adequately. Eventually they put him into a car and took him into New Orleans, where he seemed to want to go to the police station.

Medvid encountered several police officers at that police station, and then later at the Harbor Police Station, where he still could not communicate. The U.S. Border Patrol was called in and identified his nationality by using a map. They got a translator on the telephone and communicated with him for the first time.

That telephone conversation has been a key point of contention throughout the Medvid incident and throughout this investigation. Unfortunately we are still left with a conflicting story from Border Patrol Agent Ernest Spurlock, and the Ukrainian interpreter, Dr. Irene Padoch, who was in New York City.

They held an hour-long conversation, in which there was a great deal of mechanical difficulty and a great deal of translation difficulty, because of Mr. Spurlock's Southern drawl and Padoch's heavily accented English. We still do not really know precisely what transpired, but Agent Spurlock maintains even today that he was not informed, and did not perceive that Miroslav Medvid wanted asylum in the United States. Dr. Padoch, on the other hand, states that she very clearly communicated to Spurlock that Mr. Medvid did want asylum.

In any event, shortly after the telephone conversation, Agent Spurlock processed Mr. Medvid as an ordinary ship-jumper. Barbara Cart will testify later about the laws regarding crewmen control in the United States. Basically, there is less opportunity for a vessel crewman to have the time and the opportunity to speak his mind than other immigrants or refugees might have.

Medvid was returned to his ship, not by Border Patrol agents directly, but upon their orders. The shipping agent representing the Soviet vessel, sent two men to the Border Patrol office, and they took Mr. Medvid into custody, but not in a law enforcement type of custodial situation. They took Mr. Medvid back to his ship.

Mr. Medvid accompanied them willingly, without restraint, to the point of the ship's gangway, where a Soviet mate spoke to him in a language unfamiliar to the shipping agents. At that point, Mr. Medvid became quite excited, jumped in the river, and swam again. He got to shore, where the two Americans helped the Soviet mate subdue Mr. Medvid. They struggled with him on the riverbank, and sent the small boat back to the *Konev*, where six or seven Soviet sailors were picked up. They all helped subdue Mr. Medvid, who was still resisting. They carried him bodily onto the boat and took him back to the ship.

That is the saddest and the most unfortunate part of the Medvid story, as you all know and have already mentioned.

The shipping agents did not tell the Border Patrol about their difficulty with Medvid. One INS official had heard a story about a struggle with a Soviet seaman, but could not put it all together. INS began to get phone calls from some concerned Ukrainian citizens.

During the following day enough information came to light that the INS realized there was a problem with Mr. Medvid. They realized that the Border Patrol officers had treated Medvid as an ordinary ship-jumper, when perhaps he should have been considered for asylum.

The U.S. Government then swung into action at the Washington level in, I think, a very commendable fashion, and brought together several different agency representatives into an inter-agency task force. There were operational groups in New Orleans which also swung into action. This response, we believe, was sincere and committed to getting to the bottom of the Medvid problem at that point. There was a dedicated effort by State Department participants to get aboard the Soviet ship. INS had first sent representatives to the ship, and there was a sincere effort to get access to Mr. Medvid. The United States took a tough stance in dealing with the Soviets for several days following that time.

Medvid was eventually made available, after 3 days' time, and there were interviews, which we feel were thorough. Unfortunately, Medvid's time spent back in the control of the Soviets, for 3 days aboard the ship, may have created a situation which was irreversible. We cannot conclude, from what we know, exactly what happened to him aboard the ship during that time.

Some of the things that happened during the interviews have also been questioned. I will speak in just a minute about questions which were raised about the way the State Department and INS handled those interviews.

After interviews aboard a Coast Guard cutter and at a nearby naval base on the following day, a decision was made that Mr. Medvid had not given the U.S. Government any sufficient or reliable indication that he wanted to stay in this country. For whatever reason, he then was reliably believed to want to go home, to go back to the Soviet Union.

The State Department declared the case closed on October 29, Tuesday afternoon, and returned Medvid to his vessel. The vessel remained in the New Orleans area for another 10 or 11 days, loading grain. In the meantime congressional action to subpoena Medvid was underway.

The executive branch of the U.S. Government reacted to the Senate subpoena effort in an unusual fashion. They did not really focus on what we believe were the real Medvid issues. Ms. Cart will also discuss the legal issues involved in that resistance by the executive branch to the congressional effort to secure Mr. Medvid's appearance. We think there were illegal actions taken by administration officials.

We need to stress, however, that these illegal actions are not so much the deliberate, malicious wrongdoing of individual persons who knew they were violating the law, as they were institutional, evolutionary practices that have become standard procedures over a period of many years. Ms. Cart will also talk to you about the other defector cases we have examined, and about the patterns established in those previous incidents which were still present in the Medvid incident. Some of these things are illegal and must be corrected.

As we re-examined the Medvid incident, we attempted to get the best possible evidence, in the nature of the most original evidence, from every witness and from every record. We had difficulty with witnesses who could not remember events from as long as a year ago, but we kept very carefully to the facts as they could reconstruct them, and supported and corroborated all information from a variety of sources, where possible.

We proceeded in the sequence in which the original Medvid events occurred, going to New Orleans first and interviewing those persons who dealt with Medvid originally. Then we returned to Washington, where we finally interviewed the decisionmakers in the Government agencies which had handled the Medvid incident. We spent the last 2 to 3 months in analyzing and putting together the results of our field work into a comprehensive report.

I want to talk now about three or four of the specific factual issues. They are the allegations and suspicions that arose early in the Medvid incident and have persisted until this time. We know that we resolved all of these issues to the extent evidence was available, and I will discuss them at this point.

First of all, there was a widespread rumor that the U.S. Government might have been in collusion with, or involved in a conspiracy with, the Soviet Government, to ensure that Miroslav Medvid was returned to the Soviets. Such a collusion as that would have effectively denied him certain rights and would have insured that he did not defect to this country.

We found absolutely no evidence to support the rumors of a conscious conspiracy, by any member of this Government with anyone in the Soviet Government.

Second, there were allegations that communications intercepted between the Soviet vessel and the Soviet Embassy might have allowed Soviet and U.S. officials to get together and plan the Medvid repatriation even before the Border Patrol saw Medvid.

We found some relevant information on that point, that we cannot discuss here today, which is being pursued separately. Basically, that classified information does not contain anything that would support any allegation of an early Soviet communication, or a resulting conspiracy regarding the handling of Medvid.

Third, there were serious allegations that the impending Geneva summit meeting between Mr. Reagan and Mr. Gorbachev, which I think was about 3 weeks away at the time the Medvid incident occurred, might have caused the U.S. Government to speed up the repatriation process or send Mr. Medvid back to the ship summarily.

We found absolutely no foundation for that allegation. We found a great commitment and dedication by State Department, National Security Council, and Justice Department officials (who were working on the Medvid matter) to give Mr. Medvid an honest opportunity to defect, without any concern about damaging the Geneva summit.

Everyone was certainly aware there was going to be a summit, but we did not find evidence to support allegations that those concerns caused the U.S. Government to handle Medvid any differently from other defectors, or to appease the Soviets.

There were also allegations of a secret agreement between the United States and the Soviets which led to a conspiracy. We found no evidence of any such "secret agreement." There were rumors that there might be some secret agreement, to get Soviet crewmen defectors back aboard their ship quickly, in relation to the grain trade. We did not find those rumors to be supported by the evidence.

The executive branch opposition to the Senate subpoena is a very touchy issue and one that bothered us a great deal. As I said, Ms. Cart will discuss the legal implications of the executive branch position, and will explain why that position was invalid.

Executive branch authorities should not have considered the validity of the subpoena, but should have detained Medvid pursuant to immigration law and regulations.

The circumstances of Mr. Medvid's interview have also been criticized severely by a lot of people. Whether or not the use of Russian language was appropriate has been a big concern. We found that the State Department official on the scene, and the contract translator there, made a valid and reasonable decision that Russian was the proper language.

There are many persons in this country who find that very difficult to accept, but there was no indication that Mr. Medvid ever preferred any language other than Russian. He spoke Russian fluently and used Russian without any urging or any challenge whatsoever.

Also, the Russian language was appropriate for the bilateral negotiations between the U.S. and Soviet officials. Historically, the languages of the two major parties to such negotiations are used. There were Soviet officials present who did not speak Ukrainian, but all Soviet officials present spoke Russian. We concluded that the State Department's decision to use Russian was appropriate.

The issue of whether Mr. Medvid was drugged, and some of the other questions about his medical condition, his health and his wel-

fare will be discussed by Mr. Frank Heath. He and the consultants here will handle these issues.

I hope that I have given you a starting point for understanding the investigation by covering some of the factual issues here, and now Mr. Heath will testify about the drugging, the imposter issue, and the forensic examinations that we conducted.

STATEMENT OF FRANK G. HEATH, STAFF INVESTIGATOR

Mr. HEATH. Mr. Chairman, Commission members, two of the most controversial topics generated by the Miroslav Medvid incident are the imposter theory, that is, was the original Miroslav Medvid switched for another crewman from the Soviet ship, and the drugging issue, that is, was Medvid administered drugs after being put back on his ship and did these drugs affect his later decision to return to the U.S.S.R?

We have been able to completely resolve the first issue, and we have documented substantial evidence and professional opinion regarding the second.

Conclusion No. 7 in our report is, "There was no Medvid imposter." The imposter theory has transcended many of the other factual issues in the case and has taken on a life of its own. Obviously, if Miroslav Medvid was replaced by an imposter, all of the witnesses' testimony from the time of the *Salvia* interview on is tainted. Neither negotiators nor the DOS interpreter or security force personnel, nor INS and Customs on-scene personnel would have had the opportunity to observe and report on the real Medvid.

The imposter theory has been pieced together from numerous events and circumstances which, when taken as a whole, make a seemingly solid argument for the switch idea. Briefly, we found four or five different scenarios, and the first two, I think, are the most important.

The first scenario was that a New Orleans newspaper photograph of four males disembarking the Soviet ship prior to the *Salvia* interview was published, and the caption to that photograph misidentified Medvid as the bushy-haired individual who was later identified as the ship's doctor.

The mistaken identification was quickly recognized, but the idea of a possibility of a switch nevertheless was spawned in the minds of a few, and it grew in proportion as more circumstantial evidence was compiled.

The second switch theory gave some credence and momentum to the first. Unauthorized photos were taken of Medvid as he left the Navy BOQ on October 29, 1985, headed back to his ship for the last time. These photos, when compared with the original mug shots of the seaman and other news photos, gave proponents of the switch theory reason to believe that the pictures depicted two different men who seemed to them to be significantly dissimilar in appearance.

We found these and the three other scenarios were basically responsible for the genesis and perpetuation of the idea that American negotiators never saw nor heard from the man who was said to have originally sought asylum in the United States. Each theory gave impetus and was supported by the others. Not one of the theo-

ries in and of itself was substantial enough to stand on its own as proof of a switch actually taking place.

Each theory contained a substantial amount of conjecture, speculation and imagination. The theorists were always basically the same people: Joseph Wyman, a jeweler from Belle Chasse, Louisiana; his nephew, Wayne Wyman; and Navy Lieutenant James Geltz, the person who took the surreptitious photographs when Medvid was exiting the BOQ.

These people seemed to bolster one another in their imagining of a real difference in the Medvids depicted in their photographs. They gave breath to an idea that was fraught with intrigue and rooted in the idea that the Soviets had a need to or something to be gained from attempting such a dangerous deception.

But the issue of a Medvid imposter has been resolved to the complete and thorough satisfaction of the Commission investigators. No switches are deemed to have occurred, and it is understood that Miroslav Medvid himself participated in both the *Salvia* and the Naval support activity interviews.

We found the following investigative evidence disclaiming the switch theory.

No. 1, a preponderance of corroborative testimony by primary witnesses stipulating the identity of only one Medvid. Based on a comparison of his mug shot and their personal observation of the individual, this evidence is documented in the first part of our report.

No. 2, the chain of identity, which was established by Border Patrol Agents Spurlock and Vannett. Spurlock encountered the seaman at length during the early processing at the Border Patrol station, and later positively identified Medvid in the sickbay of the Soviet vessel. Vannett identified Medvid to other U.S. personnel on the basis of Spurlock's identification, and the chain of identification was maintained until Medvid's final departure.

The third evidence that we found was the nonexistence of traumatic injury to Medvid's head or face. The alleged severe injuries reportedly sustained during the dramatic physical struggle which took place on the levee prior to his forced return to the ship formed one of the strong bases for the switch theory. The man who was produced for interview aboard the *Salvia* was free from any major traumatic injuries, save his lacerated wrist. This was verified during the medical examination of the subject.

Eyewitness testimony clearly established, again referenced in part I of the report, that Medvid was on the muddy portion of the levee during the fracas and that he only banged the back of his head on the ground, not the rocks. Afterwards, no visible injuries were observed by witnesses.

In an attempt to resolve the imposter theory, the imposter issue, once and for all, we obtained all known physical evidence, which included newspaper photographs of Medvid, the INS fingerprint card, the jar he carried on the first night, his signed statements to return to the U.S.S.R., and the letter Medvid allegedly sent to former Congressman Fred Eckert after Medvid's return to the Soviet Union.

We submitted all of this evidence for laboratory examination. Some of the results of the lab tests were inconclusive for various

reasons, such as the poor quality of photographic prints, the lack of definitive distance and height measurements, and the lack of additional samples to be used for comparison purposes.

However, at our request, the Senate Intelligence Committee consulted executive branch technical experts regarding an examination of all available photographs, in addition to previously submitted materials. Their conclusion was that a comparison of Medvid images in the photographs indicates a high probability that the individuals are the same person.

Also, a fingerprint analysis was conducted by the Federal Bureau of Investigation, using items known to have been handled by both Medvids. Clearly and positively, they identified four latent fingerprints on these submitted documents that identifies Medvid as being the same person. The particular items are an English translation of the statement that Medvid signed at the Navy BOQ on October 29; also the Russian statement, which is a separate document, which he signed at the same time; and a handwritten letter that I already mentioned was ultimately sent to Fred Eckert from Ukraine on April 14, 1986. Four fingerprints were matched with fingerprints taken by Border Patrol Agent Ernest Spurlock during Medvid's initial processing at the Border Patrol station.

Also, we should note here that the investigators felt that the best way to resolve the identity issue and some of the other lingering issues in this case were to meet with Mr. Medvid personally.

In that regard, on October 8, 1986, we sent a written request to the Soviet Ambassador to the United States, asking his assistance in arranging a meeting with Miroslav Medvid at the beginning of this year. In a personal reply delivered to the staff on February 9, 1987 by Soviet Minister Counselor Kutovoy, he stated:

> Mr. Medvid recently got married and changed his place of residence. He is well and satisfied with his job. Due to these circumstances, he would like to avoid any undue attention. A meeting with him would be inappropriate at this time due to humanitarian reasons.

As far as the drugging issue is concerned, it is established that Miroslav Medvid was administered drugs after his initial repatriation back to ship on October 25, 1985. The Soviets freely admitted this fact to U.S. personnel on at least two occasions.

As background, the captain of the *Marshal Konev* advised the initial Border Patrol agents who went on the ship that Medvid had been sedated by the ship's doctor and confined to the sickbay of the vessel. Medvid was later observed in the infirmary by U.S. personnel and found to be unconscious, presumably under the influence of the ascribed medications.

Dr. John Caruthers of the U.S. Navy examined Medvid on board the *Konev* on Saturday, October 26. In this medical examination, and a second examination conducted on board the Coast Guard cutter *Salvia* on October 28, Dr. Caruthers found no evidence that the patient was physically incapable of participating in the negotiations. Dr. Caruthers, who observed Medvid throughout the negotiating sessions in the wardroom of the Coast Guard cutter, later noted that Medvid did not reveal any clinical evidence to existing drug effects. Thus, no laboratory studies were deemed necessary or useful to determine drug influence.

The third and final physical examination, which was described as a more detailed exam, was conducted at the Naval Support Activity in Algiers, Louisiana. This exam was to provide a physical assessment of Mr. Medvid, and the objective was fundamentally to provide a baseline physical exam on which a psychiatric exam could be superimposed.

The psychiatrist who was brought in, Dr. William M. Hunt, U.S. Air Force, from Keesler Air Force Base, Mississippi, conducted two psychiatric interviews with Medvid, totaling about 6 to 8 hours. Briefly, Dr. Hunt concluded that—

> Miroslav Medvid was assessed to be clearly, on October 28 and 29, as competent as basically any Soviet citizen to make a decision in regards to the issue of defection.
>
> In addition to the absence of psychosis, there was no evidence suggestive of any ongoing significant mental disorder, including substance induced intoxication, that would have impaired his competency. Furthermore, during the same timeframe, he demonstrated no evidence of internal conflict or ambivalence regarding his consistently stated desire to return to his ship and the U.S.S.R., and he clearly understood his basic choices.

Specifically regarding the drugs given to Medvid, Dr. Hunt noted the Soviet doctor stated that the medications were amonizine and seduzine, which he stated were commonly used in his country to treat schizophrenia. This led Hunt to the tentative conclusion that—

> Miroslav Medvid was treated with neuroleptics, major tranquilizers, similar to common U.S. pharmaceuticals.
>
> However, on the 28th and 29th of October, Miroslav Medvid did not appear to be under the sedative effects of any medications, with no indication of the other side effects which would commonly be seen if he was under neuroleptic or psychotic-controlling effects of major tranquilizers.

Since the events transpired, controversy has continued over the adequacy of the medical and psychiatric examinations conducted by both Dr. Caruthers and Dr. Hunt. A primary question in these examinations was whether or not the medications which were administered to Medvid on the boat affected his decision-making process.

To fully address this question the Commission investigators sought expertise of eminent psychiatrists who were initially recommended to us by the American Psychiatric Association. Dr. Howard Zonana, to my left, acted as chairman for the Commission consultants. Dr. Zonana is an associate professor of psychiatry at Yale University and director of the law and psychiatry unit and training program at Yale University.

Dr. Loren H. Roth is professor of psychiatry at the University of Pittsburgh and the chief of adult clinical services at Western Psychiatric Institute Clinic at the University of Pittsburgh.

And Dr. Ezra E.H. Griffith is an associate professor of psychiatry at Yale University and associate director of the Connecticut Mental Health Center in New Haven, CT.

The report which was prepared by these gentlemen is entitled "A Review of the Psychiatric Examination of Miroslav Medvid and Suggested Guidelines for Psychiatric Evaluations of Aliens Whose Departure May Not Be Voluntary." We have reproduced their study in its entirety, and it is included as an appendix to our submitted report.

We asked that these gentlemen conduct a comprehensive and detailed review of the medical and psychiatric examinations of Medvid performed in October 1985 and prepare a written report thereto, to include:

(a) the consideration of the physical and emotional environment in which such exams were performed and the impact which these environments may have had upon the examination;

(b) The possibility that Medvid was under the influence of drugs at the time of his examination, and if so, determine the impact this would have had upon his decisions and actions.

Also we asked that the psychiatrists identify the medical and psychiatric standards applicable in cases regarding suspected asylum applicants in the Soviet Union and Soviet bloc countries and determine if the examinations that were performed in the Medvid case were adequate.

If it pleases this Commission, I would like to have Dr. Zonana give a little background as to the report and address you now.

Chairman HOYER. Thank you.

Doctor, we are very pleased to have you here. We appreciate your taking the time to testify.

STATEMENT OF HOWARD ZONANA, M.D.

Dr. ZONANA. Thank you.

I would like to give you an overview of our report, which is quite detailed, and I will not go through all of it, but try to at least raise some of the highlights.

But first I would just like to introduce Dr. Roth and Dr. Griffith, who are both here, who worked on this with me.

This case certainly received a great deal of attention in the press, and it was also interesting that, at least to my knowledge, was the first time a psychiatric evaluation was requested as part of the State Department's efforts to assess the competency of a person's decision to return home following an aborted attempt at asylum.

These examinations were very problematic, and I would say primarily because the guidelines for these evaluations were, I would say, basically nonexistent, and so that physicians who were called in and asked to perform an evaluation for competency or voluntariness I do not think have benchmarks or standards for which to do these evaluations, and I think that created some of the difficulties in the evaluation that I will try to outline.

So I think evaluation of these exams has to be tempered by that, but we will try at least for the future to go through some of the details of this to see what we have learned.

Dr. Caruthers did a total of two or three evaluations. The exact number is not altogether clear. Certainly the first one was a cursory one, in part because the State Department felt that they wanted to keep, as they put it, a low profile when they brought the physician on board. So he did not bring equipment other than, I think, a stethoscope when he went on board, and it was also not clear whether his assignment was an independent evaluation of voluntariness or as an adjunct to psychiatric evaluation.

In any event, after his first or second examination, he certainly seemed to work in tandem with Dr. Hunt. His conclusions follow-

ing that initial evaluation were that he did note a minor injury in the left arm, anxiety, and he felt no evidence of an altered mental status from medication or drugs.

Following the second evaluation, in which he did note a fever, his conclusion was that there was no evidence that the patient was physically incapable of participating in the negotiations. Again, both of these were somewhat incomplete, in contrast to usual medical evaluations. His reports do not have any history. So we are not clear whether no history was taken or it was just not reported.

Chairman HOYER. What do you mean by "a history?" Could you just define "history?"

Dr. ZONANA. Taking a history of the patient's background so that you know either prior illnesses, what his medical history consists of so that you are looking at the present context, knowing something about the past.

Since this was the first time that he had seen him, it seemed to us highly speculative for him to have concluded or to judge the effects of the medication without knowing what had been given. In fact, 2 days later the physicians had said that he did receive medication. At best, we felt he could conclude that he was not oversedated or groggy from the medication at the time of his evaluation rather than saying there were no effects of medication.

Dr. Caruthers was present at the interview on the *Salvia,* but again, there are no notes from his observation from that time. So again, it is hard to judge some of the data that we felt would be important in making an assessment of competency in terms of what Mr. Medvid was told.

If the only goal was to determine whether or not there was some life threatening injury or illness, the exam was probably sufficient. But in order to determine competence, obviously much more is needed, and I do not think that Dr. Caruthers felt that he was trying to make a claim that he was doing the overall assessment.

Nonetheless, I think it would have been helpful to see more specific negatives in the exam about the neurological evaluation. Some of it was provided in the testimony following, but it was not in the report.

The psychiatric exam, on the other hand, again had quite a number of problems, and I guess I have divided those in the report in terms of context, content and style.

Doing a psychiatric evaluation in terms of context, (1) I think we have to regard this as an involuntary evaluation that is probably more akin to court ordered evaluations. The examination was performed in the presence of Soviet officials. There was no time, as far as I could see, that any examination was done privately or even with the Soviets observing rather than being in the room.

The examination was conducted through a translator following a period of isolation. Medication had been administered. There seemed to be some Soviet political pressure to complete the evaluation and make a decision. It was done away from a medical setting, which I think made it probably more difficult to both think about and do the kinds of blood tests and other things that might have been done more readily if it were done in a hospital, and the examination was conducted following a coerced return of Mr. Medvid by

U.S. officials by the Soviet ship, which may have affected his attitude towards the U.S. officials.

The psychiatrist was not present during the interview on the *Salvia* and did not hear or observe what was told Mr. Medvid about asylum. All of the above, I think, make it possible for us to draw limited conclusions, and I think we certainly agree with Dr. Hunt that the amnesia, reported by Mr. Medvid when he came back, saying all he remembered was falling off the ship and waking up when he came back on board, was not credible.

In terms of the content of the report, I think we felt there were significant omissions of data. For example, even what we regard as fairly basic for these kinds of forensic evaluations, who was present during the interview? What were the, "atypical and adverse conditions and limitations" that the psychiatrist felt were relevant? He does not cite those in the report other than to say that they existed.

Was he aware of Mr. Medvid's behavior at the police station? We think that is relevant to look at somebody before any medication was given, to have some idea about his condition following medication.

So we do not really know what limitations, again, as he quotes, limitations of available data which he regarded as significant.

There is no prior history. Again, in a psychiatric evaluation, someone's current behavior and manner and style is very dependent on what he was like before. What is his basic personality? Was there any prior psychiatric history? What was the history? We do not know if it was taken and just not reported, or was not taken.

The data that led to the conclusion that he clearly understood his basic choice is not presented. So again all you are basically left with is the conclusory statement without the primary data on which to evaluate whether that was adequate or not.

Much has been made of the lack of urine and blood testing for drugs, and I think what we can say at this point is that while blood levels are not, per se, a sufficient basis to decide what effect drugs have, certain drugs like alcohol, narcotics can affect, I think, as I would put it, can make someone not care as much about decisions. A lot of people that take narcotics do not care as much about what happens to them when they are on drugs, and how that can suddenly affect things or suggestibility are the kinds of issues that we would be concerned about obviously.

I do not know how to assess that in this particular case. I think all we can say is that he certainly was not snowed with medication. He seemed reasonably alert, but that does not negate the possibility that drugs were playing some role.

I think certainly in future evaluations, given the kind of scrutiny and concern that most people have about it, it certainly is easy to do and should be done.

The style of the report, I guess, we had some difficulty with, too. There are some basic standard formats that I think the essence is to try to separate the data that you have collected from your conclusions. I think the style of this report involved a lot of informal language, "grabbing for the glitter and gusto," making statements about his maturity or immaturity which to us seemed premature on the basis of a few hours' interview without the available data of

prior history. Again, the focus here should have been on the competency and the voluntariness.

The competency, again, for which there were no guidelines, we do not see the data for in there. In other words, what did Mr. Medvid know? What did he understand? What was his capacity? What was he told, were the kinds of things that we would have liked to have seen more spelled out and quoted in the report.

So when he said he is as competent as basically any citizen to make a decision in regard to the issue of defection, there is no standard that we know, or at least we do not know what standard Dr. Hunt used. I will get into some more discussion about possible standards and the kinds of standards that we think can be reasonable or that you can expect a psychiatrist to be able to assess under these circumstances.

So when he says that he is competent, that is an inadequate statement in our view. Someone makes a will, someone gets married, someone is competent to stand trial or even now to be executed. All of these involve different standards and different capacities, and so when you ask what is the standard for someone to change his mind and say he wants to return home, there is not a lot of literature on this, and certainly nothing in the guidelines from INS to help a physician who is doing an evaluation like this.

Dr. Hunt seemed to equate the presence of psychosis with competency, and I think that, again, is an inadequate conclusion. Whether or not someone is psychotic is not the whole answer to the question of competence.

We tried to see what kinds of situations these kinds of evaluations might come up with, and there certainly is nothing in the formal literature. I will not go through the details here but we found three or four prior instances that mostly came out in the newspapers. If you remember from years ago, the Russian ballet dancer who defected and said his wife wanted to defect, and then she was immediately sequestered and then there was a confrontation at Kennedy Airport at which the State Department tried to interview her. It was not a psychiatric evaluation, but there was all the same ingredients—of a period of time away, possibilities of drugs and things like that. There was the other incident where the son of a diplomat wrote a letter saying that he wanted to defect and then returned home and was sequestered for a period, and the State Department wanted to interview him, again, to try to understand what his intentions were, and there was a third case where an engineer on his way back to Russia slashed his wrists and throat, and again the State Department wanted to try to make some assessment.

I think the features of these were that these were all cases where the individual either made affirmative statements indicating a desire to stay in this country, followed later by statements to the contrary, as in the Medvid case, or cases involving no contradictory verbal utterances, but whether other evidence cast doubt on the voluntariness of the person's departure, and those consisted of either acts like the suicide attempt or evidence believed to be trustworthy by State Department officials from third parties.

We certainly operate under the assumption that if a person clearly requests asylum, even if mentally disordered, the ordinary

asylum application procedures would begin, including permission to remain in the country pending further evaluations before a final decision would be made.

I think I'd like to add the caveat as Mr. Lamberth initially said. The best way to avoid future incidences like this is that asylum procedures are followed, that the damage done by an initial forceable return to custody of foreign officials in such circumstances cannot wholly be undone by later arrangements for evaluation, no matter how carefully designed. I think unfortunately you can probably still expect to find occasional instances where people get into routines, like in New Orleans. The problem is that there are two or three ship-jumpers a day who are returned, so that people do not remember or follow these guidelines. Obviously this type of case is of such sensitivity that these guidelines should be well known.

The standard so far as we could see is, that the regs say that where such an alien is departing or seeking to depart, where doubt exists whether an alien is departing voluntarily, he may be detained. The problem is what does "voluntary" mean in this circumstance.

I will not go through all of our discussion about this, but certainly the definition of "voluntariness" is not one that we can pick up from any other legal setting that we were able to find. If you look at voluntariness for informed consent or research, or if you look at it even for giving confessions in the criminal system, they all have provisos that there should not be any evidence of coercion, all of the Miranda warnings and things like that. If there is any taint involving that, the confessions are thrown out and not regarded as voluntary.

Even in all of these circumstances, there is usually clear evidence that there is some kind of pressure or coercion, and so the usual definitions will not hold.

This is also a complex issue. Asylum-seekers who say they want to defect change their minds and go back to situations that a lot of us would feel would be either dangerous or unreasonable, and yet they do so for a lot of complicated reasons which we may or may not understand. So even when we disagree with the decision, it is hard to rush to a judgment of involuntariness when someone changes their mind, and I think that is why once you lose control of a situation and have somebody back in an inappropriate way, you are in a position that you cannot undo it.

So regarding the standard, I think we felt that the standard here must be that the individual can decide whether to request asylum without fear for their own personal safety if they now choose to stay. That is probably the best that we can do. We must try to create an environment wherein, if someone says they want to stay, it will be clear that they will be protected, and that they will be escorted and safe under those circumstances.

You cannot erase any threats of personal mistreatment that may have occurred before the interview. All you can really do is try and structure the interview in a way to provide the maximum show of protection, which at times may even require some show of force.

We are certainly not recommending that psychiatrists get involved in all of these evaluations. I think most of the procedures that are followed clearly will not require psychiatric involvement. I

think the usual common sense notions of voluntariness by officials will probably be adequate.

We did identify two guidelines that we thought might be useful for thinking about when to involve a psychiatric assessment. First, if there is a question whether the potential asylum applicant has evidenced a choice or that the choice is not clearly communicated. I think that was the circumstance here. The interview on the *Salvia* when he sat and looked at the glass for 3 minutes, that certainly raised question about whether he was given a clear choice, and I think that was correctly interpreted.

Second, if the potential asylun applicant evidences a choice that he wishes to return to his country of origin, but does so in the presence of obvious irrationality, disorientation, intoxication, suicidal behavior or preoccupation. I think those standards are ones which can be easily applied by officials. You do not need to be a psychiatrist to see or identify something like that, and I think that can be a useful trigger, and I think under that latter circumstance, a psychiatric evaluation ought to be mandatory. I think where it is unclear about the choice, officials may be able to decide about those things.

I think the second part of it is when the psychiatrist comes in, what ought to be the standard that he uses, and I think we have tried to give a standard that, again, is workable, and our recommended standard is: "whether a person lacks substantial capacity to make an understanding and voluntary choice to return." I think we try to outline the various possibilities, whether it is enough for someone simply to say he has a choice, whether the choice is reasonable, whether it is rational. We opted for, because we think it is most objectively assessable, "whether he has the capacity to understand the risks and benefits and to make a choice." I will not go into more of the details about that unless there are questions.

I think we tried to make some recommendations about the format of the interviews so that, if for political reasons you need to have Soviet officials involved, we think it is better to have a one-way screen. I think the interviews ought to be recorded so that we can review and have some idea about what happened, so that we can make a reasonable assessment. I think those can be done within 48 hours. I think if there is some question after that point, a second consultant ought to come in to try to bring a different perspective, and that probably would be a civilian psychiatrist.

If after 3 or 4 days you are still stuck, then I think it is hard for everybody. You have an international incident on your hands. You have to decide whether to hold onto someone for continued observation, whether to treat, or if the person is saying that he wants to go back, despite some evidence that he may not be competent, that you have to let him go back. I think those are complicated political decisions.

Since most psychiatrists do not do a great number of forensic evaluations or testify, in spite of some of the newspaper evidence to the contrary, we have tried to provide some guidelines for psychiatrists doing evaluations so that they will know what questions they ought to focus on, how to do the evaluation, how to write a report which contains the information which will help people make an assessment. These are rare evaluations, but they should be done very

carefully. They are important for an individual, and they make a great deal of difference in terms of his own life and future, and I hope that our efforts in that regard will be useful.

Thank you.

Chairman HOYER. Thank you, Doctor, very much.

Ms. Cart.

STATEMENT OF BARBARA JEANNE CART, STAFF ATTORNEY

Ms. CART. Mr. Chairman, I will try to be brief and just hit the high points on the legal aspects and the infractions, but there is a much more detailed explanation in the report.

Basically, as Senator Humphrey alluded to in his opening statement, the mandate of S. Res. 353 was that the Commission determine whether any officers or employees of the United States violated any Federal, State or local laws in connection with the attempted defection of Medvid. The Commission was also directed to investigate instances in which an individual from the Soviet Union or Soviet bloc country requested political asylum and was returned to authorities in his country in violation of Federal, State and local laws.

We spent a great deal of time looking at the various laws that applied to these situations, and ultimately did come across some violations.

As a general rule, when a merchant vessel from one country enters the territorial waters of another country, it becomes subject to that country's jurisdiction. This is particularly true of laws regarding navigation or safety or health or passport immigration laws.

When crimes are committed on board a foreign vessel while it is in U.S. waters' they are not exempt from local laws if the crime affects the peace and security of the port, but there is an implied consent on the part of the U.S. Government to abstain from interfering with the internal discipline of foreign merchant vessels while they are in U.S. harbors and to leave jurisdiction to the nations to which those vessels belong.

In the Medvid case, as the events began to unfold, there were a number of allegations that were circulated. There were charges that Medvid had been shanghied, kidnapped, beaten, even that he had been killed. Clearly, this was jurisdiction for local authorities if, in fact, these crimes had been committed.

In our investigation we found no evidence of criminal activity. As a result of this and a result of interviews with the authorities in New Orleans, we found local authorities were very well aware of what was going on at the time it was happening and were kept informed. Local law never came into force. Basically we are dealing with Federal law here.

In order to explain why none of the activity we found was criminal, I think you have to understand what really did happen in a legal sense. Under the Immigration Nationality Act of 1952, which is the primary immigration law we are dealing with, crewmen are treated differently than other nonimmigrants. Because of problems that occurred following World War II, Congress decided to treat crewmen very strictly.

If a crewman comes into the country, they have to meet certain INS regulations in order to be given shore leave or a landing permit. If he does not meet that criteria, he is detained on board. The owner of the ship, the master of the ship and the shipping agent are held responsible for insuring that that seaman is kept on board and that he returns to his home country or to the country from which he came on that vessel. They can also be held financially responsible. A fine can be levied if they allow these crewmen to desert.

Crewmen who desert their ship or who indicate they are not going to return are subject to summary deportation. The current statute does not give them the same protections or the same procedures that a normal alien would have. If we have a nonimmigrant alien who is found to be in illegal status because he walked across the Mexican border, he is going to be given the choice of voluntarily departing or going through a formal deportation proceeding at hearing, and he can raise all kinds of challenges, and it can be delayed for a very lengthy time.

Crewmen, on the other hand, are simply put back on their ship, and the way this is usually handled and has been handled for many, many years is; they are put back into the custody of the shipping agent or the master of the ship or the owners of the ship, and the owners, the masters, the shipping agents are ordered to detain, to hold that person and to deport them.

The only time that an alien crewman is going to be allowed to remain in the United States once he deserts his ship is if he asks for asylum. Now, clearly the problem that we come down to in the Medvid case is the conversation between Agent Spurlock and the interpreter, Irene Padoch. Agent Spurlock has repeatedly said that he did not believe Medvid wanted asylum and, as a result, processed him as a deserting crewman, namely, he put him back into the custody of the shipping agent who returned him to the ship. Irene Padoch has indicated that she believed Medvid wanted asylum. She said she conveyed that to Agent Spurlock. There is a direct conflict there that we cannot completely resolve because the telephone conversation was not recorded. The other Border Patrol Agent, Bashaw, was not privileged to the conversation. He merely heard Spurlock's side of it, and obviously we do not have Mr. Medvid to ask directly as to what happened.

When we reviewed the facts of the case and when we went through the internal procedures that INS has for Border Patrol and for INS agents to follow in handling crewmen deserters, it was very clear that if there is a problem with an interpreter, they have the authority to simply request another interpreter. We feel that there was enough indication here that Spurlock did not believe Ms. Padoch. He should have gotten another interpreter.

There are also provisions that if it is an unusual problem, a problem that could have international impact, they are to notify their supervisor. Spurlock did not notify his supervisor, and we feel that under the circumstances, he should have.

Finally, if you are to believe Ms. Padoch, that she indicated to Mr. Spurlock that Medvid wanted asylum, Spurlock should also have followed the immediate action procedures and immediately started the whole asylum application procedure to allow Medvid

the opportunity to file a formal application and be interviewed and get into the process.

We believe that these violations of procedures are very serious, and they are serious in their consequence. But we did not find evidence that they were done as a willful or deliberate act by Agent Spurlock, but more as carelessness; negligence on his part.

I would like to also go back to the shipping agents for just a brief second because that has been a very important concern here; the handling by the shipping agents. It was the shipping agents who physically returned Medvid to the ship. When Medvid jumped off the launch and swam to shore the second time, he was restrained. We looked at this very closely. We found no evidence to support allegations that he was beaten or that he was any more than simply restrained. He was physically overpowered and carried back to the ship by the other crewmen.

You have to remember the shipping agents were acting under an order of deportation by the Border Patrol officers. For this reason, we do not find any criminal wrongdoing as far as that incident is concerned. However, it is a concern that the shipping agents did not notify Border Patrol agents following the incident as to what had happened, and that is one of those things that if they had followed up on, then the whole incident may have been brought to someone's attention much quicker.

As we reviewed the Medvid case and other cases that the State Department and INS have handled concerning voluntary departure, there was one thing in particular that came to our attention, and that is the role of the State Department, which appeared to be a lead role in many of these cases. Clearly, under the Constitution, Congress has the power to make all laws necessary and proper to carrying into execution the powers vested by the Constitution in the Government of the United States or any department or officers thereof. Congress has assigned the primary responsibility in immigration matters to the Department of Justice, to the Attorney General and to the Department of Justice officials, namely the INS Commissioner.

In the Medvid incident, the Border Patrol and INS assumed immediate control of the situation. They sent Border Patrol agents out to the ship. They boarded the ship. They maintained a presence on board the ship until the situation could be stabilized and decisions could be made on how to handle the situation.

But within a matter of hours, a State Department official had arrived on the scene in New Orleans. From that point forward, for all practical purposes, State Department was in charge of the operation. We do not feel that this is consistent with the way that the law is worded.

Supreme Court decisions have affirmed that the Immigration Act is so broad and so specific in the way that it outlines procedures that it restricts the role of the Executive to make decisions, to delegate authority. The President can exercise authority, his constitutional authority, over foreign relations, and he can assume a very broad power under that authority, but it is important that when he acts under his plenary authority he indicates that is the basis for it.

Yet in the Medvid case, the legal basis for detaining and questioning Medvid was repeatedly cited as INS regulations. What we are saying is that it cannot be both ways. Either the President was acting for political reasons, for foreign policy concerns, and for that reason he wanted the State Department to be in control of the situation, or you allow the immigration authorities, under the Immigration Act, under the regulations that have been promulgated under that act, to do their job, and that was simply not done in this case.

We found no statutory or regulatory authority that would allow the State Department to intrude operationally into the Medvid case or any other case of this nature. Their role should have been limited to conductig negotiations with the Soviet Embassy and advising the immigration officials.

At the same time, INS relinquished its jurisdictional responsibility under the act to the Department of State in direct conflict with the intent of Congress.

I would like to point out that there is no reason for us to believe that the outcome of the Medvid case would have been altered, but the lines of responsibility were unnecessarily confused, and we believe that this contributed to unacceptable delays in planning, organization and execution.

The main problem here is when you have got two agencies which are supposed to be in charge, there is confusion as to who you go to to hold responsible for the actions that were taken.

Finally, the INS failure to prevent the departure of Medvid goes directly to the Agriculture Committee subpoena. As has been previously stated, the Agriculture Committee issued a subpoena requesting the presence of Medvid at a committee hearing. This issue was brought to the attention of executive branch officials, and we are aware that at least one meeting, perhaps more, were held with executive branch officials from White House, Department of State, Department of Justice and other executive branch agencies, where this whole matter was discussed.

Based upon the evidence that we found, these officials decided that it would not be appropriate for Congress to review the actions that had been taken by the State Department and INS in the matter; that the Agriculture Committee lacked jurisdiction to issue the subpoena over Medvid; that the subpoena had not been served properly; that appropriate notice had not been given to immigration officials; and generally that the executive branch should not enforce a Senate subpoena.

When we reviewed all of the documents and the legal basis for this, it seems clear to us that the issue of enforcement of a subpoena somehow clouded the true issue of the case. Everyone seemed to be concerned about the enforcement of the subpoena. In fact, there are regulations, statutory regulations, for enforcement of Senate subpoena. There is no need for the executive branch to enforce Senate subpoenas. That is not the case here. There is an INS regulation which says clearly.

> If a departure control agent of the Immigration Service knows or has reason to believe that an alien is needed in connection with any investigation or proceeding being or soon to be conducted by anybody in the United States, namely Congress, shall temporarily prevent the departure of such alien from the United States.

These regulations do not specify a particular type of notice.

Clearly, the INS officials knew that Medvid was wanted for a Senate investigation. It appears to be a different view of the law, but from our view, they were not consistent with the law. They did not follow the regulations, their own regulations, and we see this as a violation.

Mr. Chairman, that is really all I have to say.

Chairman HOYER. Thank you very much.

That was a comprehensive discussion of the facts and conclusions of the report, and we appreciate that. The written report, of course, is available.

Mr. Lamberth, let me ask you: Could you sum up what your findings and conclusions were?

Before we start, let me observe that Senator Humphrey and Senator DeConcini both had to go vote. I think the vote ends at about quarter of or ten of, and they will be returning. Until that time, Mr. Ritter and I will be questioning, and we expect to go until 12:30.

Mr. Lamberth.

Mr. LAMBERTH. Mr. Chairman, it is difficult to synopsize such a complex and lengthy investigation as this was, but briefly, we have determined that the U.S. Government, executive branch of government, has been improperly executing current laws and regulations regarding immigration matters. The State Department, due to understandable concerns about the foreign relations impacts of incidents such as the Medvid case, has taken a lead role, when the law, in fact, allows only the Justice Department to take that lead role.

We sincerely believe that the State Department should be closely allied with the Justice Department in such incidents. Its wisdom and advice are crucial. We find the Medvid incident to be perhaps the final and most important in a series of similar incidents that have occurred over the past 20 years, which highlight this conclusion.

I must add that we do not find, in the results of our investigation, that there were any individual employees or officers of the U.S. Government who committed deliberate wrongful acts in an effort to return Mr. Medvid to the Soviet Union summarily. We found dedication and commitment by those individual employees, but improper guidance from the highest levels of government.

Chairman HOYER. Now, following up on that observation, however, it is my understanding of what Ms. Cart has said and in a review of the findings and in the course of discussions with you, that in point of fact, willful or not, that at the very highest levels of government, as I understand it, decision was made not to honor the subpoena.

Ms. CART. Yes, sir.

Chairman HOYER. And not to take such action as was necessary to keep Medvid here until such time as that subpoena was either served, rescinded or responded to, correct?

Ms. CART. Yes, sir, and in fact, it is our information that the decision was made actually to ignore it. They were told to ignore it.

Chairman HOYER. So what is your conclusion on the willfulness of that decision? How do we know, for instance, that there was not a willful decision to the extent that there was a decision made at,

as I understand it, the highest levels of our Government that the Senate subpoena would not be honored? As Ms. Cart has indicated, contrary to specific INS regulations which say that if the agent knows or has reason to believe that the individual is needed in connection with an investigation or proceeding, that they will be kept in this country pending the resolution of that issue. A decision was made not to honor the subpoena.

Mr. LAMBERTH. Willfullness, as I intended there, does apply to specific actions. They acted willfully, but the knowledge that those actions were in violation of the law does not seem to be present.

Chairman HOYER. All right. Let me go on then to the Simpson report. Obviously, prior to the initiation of this investigation, Senator Simpson's committee had investigated this matter. We had available to us that report. Can you give me any observations with reference to any conclusions that you drew or facts that you found that were inconsistent or in addition to the Simpson report?

Mr. LAMBERTH. On the factual issues, Mr. Chairman, we found no significant point of conflict with the findings and conclusions of the Simpson report. On the issues of a possible imposter and specific factual allegations, we concurred with their findings.

We differ, though, with their rather general conclusions that the U.S. Government did everything "appropriately and reasonably," since it is not "appropriate" to be in violation of the law.

Chairman HOYER. So that to that very important extent, your conclusions would differ from the Simpson report?

Mr. LAMBERTH. Yes, sir, but I should add that the Simpson report to which you refer was based upon a very brief inquiry, not a lengthy, formal investigation such as we conducted. The scope of it was apparently limited to the initial factual issues of the Medvid incident which concerned the Senate Subcommittee on Immigration. It was never intended nor structured to do the kind of indepth review that we did, and while we disagree with that general conclusion that they reached, we understand that they did not have the opportunity to do the thorough analysis that we did.

Ms. Cart might explain the difference in their conclusion and ours, as far as the legal issues are concerned.

Ms. CART. Well, I think just simply they did not address the legal issues in the same manner. They were simply looking at the facts, at the imposter theory, at the actions taken by the Border Patrol agents, and it does not appear that they viewed it from the same perspective we did as to overall jurisdiction.

Chairman HOYER. As I understand it, what you are saying is that the Simpson report was addressing factual questions, that had been raised rather than whether specific regulations, procedures and laws had been carried out.

Ms. CART. They addressed the specific regulations as they applied to the asylum matters, to that specific issue. I guess what I am saying is what we did, we took a step back and simply questioned the whole authority of the action taken, and the committee did not do that. They simply accepted that at face value, and questioned only what took place in the current asylum procedures and how they were handled.

It was our view that since the Medvid case or Mr. Medvid never formally made an application for asylum, and I am talking about

formal application now; he never got into that procedure, and so we simply did not address that in our report because it seemed irrelevant. That was not the problem. The problem was he never got into the system, and that is what we were trying to determine about what happened.

Chairman HOYER. Now, part of the reason he never got into the system was because the subpoena was ignored. That is part of the reason, and your conclusion is that it was not willful to the extent that we have no evidence on which to base a conclusion that the law was known specifically and not followed; is that correct?

Mr. LAMBERTH. Yes, except for the reasonable conclusion that persons within INS and Justice Department must surely have known of the provisions of their own laws and their own regulations, that is, to detain an alien when there is knowledge that his presence is required for some official purpose.

Chairman HOYER. Now, when we are talking about the highest level, are we talking about the Attorney General?

Mr. LAMBERTH. Yes, sir, at that level. The Attorney General, Robert MacFarlane and Admiral Poindexter at the National Security Council, high-level State Department officials, and perhaps even the President, were in consultation at various times and did discuss these issues. Mr. MacFarlane told me, for example, that he remembered the President learning that some Senators were quite angry, and that there was a movement to get a subpoena for Medvid's appearance before Congress.

We feel that those persons at that level did not intend to violate laws when they reached their conclusions, but based upon advice from subordinates, they felt their position was defensible and that everything reasonable had been done with Medvid. They felt there was no requirement or need for them to do anything further or assist with the subpoena.

Chairman HOYER. Mr. Lamberth, let me pursue that just a minute. Your investigation found that there were discussions involving the Attorney General, Mr. MacFarlane, by Admiral Poindexter of this subpoena; is that correct?

Mr. LAMBERTH. Yes, sir, to the best of the recollection of available witnesses. Some key witnesses were not available, but those who recalled anything on that subject believed that there were discussions, among those persons I named, regarding three or four major points of the Medvid incident, including what to do about the congressional effort to subpoena Medvid.

Chairman HOYER. Were you able to find any evidence, documentary evidence or testimony, that would lead you to conclude whether the specific question was asked as to what, in fact, the regulations and law were on this point? Would it not be reasonable for us to expect the Attorney General of the United States to know what the law is on these issues?

Mr. LAMBERTH. There was no specific documentary evidence about that, but Ms. Cart has more information from the Justice Department.

Ms. CART. Yes, sir. In the memorandum that we examined written as a result of the meeting and the discussions in the meeting, specific reference was made to a lack of appropriate notice to INS. This is strictly my own interpretation of that because, quite frank-

ly, we tried to speak with Lowell Jensen, who was at the meeting and was the second in command at the Department of Justice at the time. He declined to speak with us and let the record stand on its own.

But a lack of appropriate notice to INS, to me that means that they were trying to abide by the regulation; that they wanted formal notice. The Agriculture Committee did not notify INS directly. They contacted the Customs Service and requested that they hold the ship.

What we are saying is that the regulation does not have a specific notice requirement. It says simply if the departure control agent knows or has reason to believe, and clearly, the Department of Justice and the INS officials knew.

Chairman HOYER. Let me ask you something, Ms. Cart. Did you have any trouble finding that regulation?

Ms. CART. No, sir.

Chairman HOYER. I have a number of other questions, but let me at this point turn to Mr. Ritter.

Mr. RITTER. Thank you, Mr. Chairman.

I would just like to pursue the questioning of the Chairman for a moment. Were you denied access to any witnesses or any evidence in the course of your investigation?

Mr. LAMBERTH. Yes, sir, we were. Ms. Cart has just mentioned Lowell Jensen, who was then Deputy to Attorney General Meese, who is now in private life as a federal judge, I believe, in San Francisco, and who declined to be interviewed. He deferred to Justice Department officials whom he said could answer for him from their records. Therefore, his personal recollections were not available to us.

We were specifically denied the opportunity to interview Larry Speakes, former Presidential Deputy Press Secretary, and Mr. Linas Kojelis, an ethnic affairs specialist for the White House. That declination came to me in writing from an associate counsel to the President, and was based upon "executive privilege."

Permission was also sought to interview Admiral Poindexter. That permission was denied in writing by his attorney, based upon a number of involvements that Poindexter currently has with other investigative matters. The records of the National Security Council and the White House Situation Room were also withheld, although I believe that I was accurately told those records were minimal, because there were not many records created regarding this incident. That denial was also based upon "executive privileged."

Mr. RITTER. That was a precursor to my next question, which is: Do you have any reason to believe that the witnesses that you were denied access to could have contributed materially to the understanding of the investigation?

Mr. LAMBERTH. Probably not materially, Mr. Ritter. We had a preponderance of evidence from other witnesses so that we knew basically what had transpired. But an investigator is never really satisfied until he has all of the answers, and I would have liked to have the White House information.

Mr. RITTER. Is that why the investigative team did not challenge the claiming of executive privilege, if you know?

Mr. LAMBERTH. Yes, sir. The reason was that we did not see any indication that there was anything significant missing. We did not have suspicions that we were missing evidence that those witnesses could contribute.

Mr. RITTER. So you do not feel at this point that there is any unclassified evidence which could materially contribute to the further understanding of the situation as it evolved?

Mr. LAMBERTH. That is correct, sir. I believe that, in the arena of unclassified material, we have located and examined everything that we could have found.

Mr. RITTER. How would you characterize the level of cooperation which you received from the various executive branch agencies that you contacted in the course of the investigation?

Mr. LAMBERTH. Other than the formal declination, denial of access, by the National Security Council and the White House, the cooperation was excellent. I was not pleased that there were delays in getting to some records, but once we had established effective liaison, the Department of State, the Customs Service, the Department of Justice, and particularly INS and Border Patrol, were all forthcoming and extremely helpful, especially at the working level we dealt with.

Mr RITTER. Do you share that opinion, too, Ms. Cart?

Ms. CART. Yes, sir, I do.

Mr. RITTER. How about some of our other colleagues here who had to work with Hunt and Caruthers and some of the other aspects of the investigation? Did you feel that you got complete cooperation from all parties concerned?

Mr. HEATH. Yes, sir. Yes, I did.

Mr. RITTER. You have concluded that the White House, the National Security Council, Department of State, and Department of Justice failed to follow statutorily established procedures. Had they followed these procedures, do you feel the outcome of this situation would have been different?

Ms. CART. No, sir. We really do not because, as Mr. Lamberth said earlier, it appears that every effort was given to Medvid, to give him the opportunity to say, "I want asylum." This is, of course, after U.S. officials became aware that he had been put back on the ship.

Mr. RITTER. I meant, would the outcome have been different had Medvid been produced for the Senate hearing?

Ms. CART. Well, if you are asking for my opinion——

Mr. RITTER. Yes.

Ms. CART [continuing]. My opinion is that once he was put back in custody, the opportunity was lost. That is simply my opinion, and there are some other cases that we have cited in here to show that if action is not taken in the very beginning, once that opportunity is lost, you can never regain that ground.

Mr. RITTER. So is it your opinion that had Mr. Medvid appeared before a Senate investigating body, the outcome would have been the same?

Ms. CART. It is my opinion that he probably would not have, but let me also say that it is my opinion that that effort should have been made. This is strictly a personal opinion.

Mr. RITTER. Can I get some other opinions here? Then I would like to move on.

Mr. HEATH. I cannot say that I would disagree with what has already been stated. I believe that the outcome would have been substantially the same.

Mr. LAMBERTH. I concur in that opinion. Although it is unfortunate, the Soviets apparently do a very effective job once they have control of a person.

Mr. RITTER. Let's hear from the doctor.

Dr. ZONANA. It may be a psychiatrist's opinion, but I would say I would be harder put to draw as firm a conclusion. All of these evaluations were done in the presence of Soviet officials with a man who was just saying that he fell overboard. I would have been more comfortable had he said, you know, "I changed my mind."

Mr. RITTER. Yes. I think this is the next area that I would like to spend my time on, Mr. Chairman. The credibility of the interview, I think both Mr. Heath and Dr. Zonana really called into question the appropriateness of the medical examination, of the psychiatric examination. It seems to be at best minimal. It almost seems as if it was done in a way to get it over with as quickly as possible, as if somehow the doctors were more concerned with offending the Soviets than they were with providing justice for this poor, embattled human being, but that is my opinion. Let me get into some more detail here.

The fact is he did say that he did not remember anything, that he had amnesia; is that correct? All he did was he fell off the ship and then did not remember anything; is that correct?

Dr. ZONANA. That is correct.

Mr. RITTER. Now, shouldn't this have been a "bells and whistles" statement to the doctors who were interviewing Medvid at the time?

Dr. ZONANA. Well, it certainly is a "bells and whistles," but what do you do with it? It raises questions about why he is doing it, and you can speculate about it.

Mr. RITTER. Let me take that one step further. What, in your opinion, should have happened? When Caruthers first saw Medvid and he was unconscious, what, in your opinion, should have been his response, our response, at that point? Should we have just left the ship and waited until the Soviets produced a body, or should we have been doing something? I do not understand.

Dr. ZONANA. The problem is beyond my expertise as a physician to get into what we should have done. It depends on the goals. If you want to know how he was being treated and what he was being given, then if you are there to see——

Mr. RITTER. Were the State Department officials in charge at that time, Ms. Cart?

Ms. CART. No, sir. That was the immediate response to learning about Medvid.

Mr. RITTER. How did the State Department officials find out about the Medvid situation? Mr. Lamberth mentioned in his testimony that the two shipping agents did not report the scuffle. Who reported the scuffle? How did we find out about it?

Ms. CART. Actually there was "dock talk" literally within an hour of the incident.

Mr. RITTER. So if it was not for the "dock talk," we would not have found out because nobody cared enough to officially report this information?

Ms. CART. Well, alternatively, about 6 hours later, maybe a little bit longer than that, Irene Padoch, the interpreter, contacted a friend of hers in Louisiana. She had clearly had problems with the conversation. She was not pleased with the way the conversation had gone, and that individual contacted another individual in New Orleans who approached INS authorities. So we actually heard of it from two sources.

Mr. RITTER. And, in Congress we were working with Irene Padoch at the same time I was in close contact with Irene Padoch, and if this was bumbling, this was bumbling on a massive scale, because Irene Padoch was as convinced as she was alive that she had mentioned asylum. I mean, it was undeniable.

But getting back to the 3 days, Dr. Zonana, are you aware of Soviet psychiatric hospital treatment of dissidents?

Dr. ZONANA. I am aware of some of that literature certainly. I know some of the people who are interested in that area.

Mr. RITTER. Are we knowledgeable about the kind of psychiatric treatments and drugs that are administered to dissidents in order to calm them?

Dr. ZONANA. I think we know a little bit. We know that drugs are used. We know that large doses of drugs are used, but we do not know how systematically.

Mr. RITTER. Does our medical community even have access to the levels of sophistication, to the chemical treatments, to the medical results; do we even have the foggiest idea, given our own values and our own systematic enforcement of human subjects research rules; do we even begin to know that Mr. Medvid received, and I cannot remember the name of the tranquilizers that were mentioned?

Dr. ZONANA. They said they were comparable to our drugs, but we certainly do not have——

Mr. RITTER. So do we have the foggiest idea from which to make that conclusion, that the drugs given Medvid, were comparable to U.S. drugs? I do not believe we can. We observe a body, but because we have taken no biological tests, no blood tests, no urine tests, there is no way we can make that statement.

Dr. ZONANA. That is correct.

Mr. RITTER. Mr. Chairman, I think at this point I will yield to my colleague, Mr. Humphrey, for his questions.

Chairman HOYER. Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

First, is the classified report now waiting for vendors to get finished?

Mr. LAMBERTH. No, sir. There is still work ongoing on the classified aspects of our investigation, and I suspect it will be approximately 2 more weeks before that can be completed, depending on the level of cooperation of the agency involved.

Senator HUMPHREY. Is it possible, since the public will not have access to the classified report, is it possible maybe to generalize on a nonclassified basis the subject of that report?

Mr. LAMBERTH. Sir, I really do not feel competent to answer that for you. I would have to confer with the Chairman. The appropriate oversight committee, the Senate Intelligence Committee, is assisting us in that matter.

Chairman HOYER. The chair will observe, consistent with our discussions earlier, that we will not treat that part of the report today because of the coordination with the Senate Intelligence Committee.

Senator HUMPHREY. OK. There are two violations of the law, as I understand the report, at higher echelons. I am not talking about the initial bungling, but at higher echelons.

Ms. Cart, first, the matter of the substitution of a State Department person in place of an INS person or Justice Department person in the position of control, that substitution of the State Department person for an INS person is contrary to law; am I correct on that?

Ms. CART. Yes, sir.

Senator HUMPHREY. Yes. So that was violation of the law. Did any official at INS or Justice protest the State Department's muscling into the case?

Ms. CART. I found no evidence to indicate that there was a formal protest made.

Senator HUMPHREY. Some records and witnesses have been withheld on the basis of executive privilege. Are you prevented from knowing the answer to my question because these witnesses and records have been withheld?

Ms. CART. Yes, sir, to a limited extent, but not on the basis of executive privilege. It would have been very helpful if we could have spoken with Mr. Jensen, Judge Jensen, but the judge declined to speak with us and deferred us to Department officials. Now, that was his personal choice.

Senator HUMPHREY. Did the investigators ever ask INS officials if they protested this substitution?

Ms. CART. Sir, we interviewed several of the INS officials, and they simply did not see it as a problem. They immediately said,

Well, this is a foreign policy matter. The Soviets are involved. We defer to State. Let them handle it. We're glad to do it.

Senator HUMPHREY. So they acquiesced?

Ms. CART. They acquiesced.

Senator HUMPHREY. Perhaps out of ignorance. Nonetheless, it was a violation of the law which INS has to take responsibility for.

Now, the much more serious matter of the salient refusal of the Justice Department, the INS team, an alien who was wanted for an investigation, who the Justice Department knew was wanted, and there can be no question that the Justice Department knew and the State Department knew there was an outstanding subpoena and that he was wanted for a Senate investigation, and therefore, under the law, the INS had the obligation and responsibility to detain the alien.

The excuse offered by the Justice Department to apparently the investigators and likewise in a letter to me was that the Justice Department has no responsibility to enforce a legislative subpoena, and that is really a red herring. It is beside the point.

Let me back up a little bit. Under what authority did INS remove Medvid from the *Konev*, under what law?

Ms. CART. This was a regulation, and it is 8 CFR 215.2 and 215.3. It is basically the same provision but different paragraphs to the provision that I am talking about.

Senator HUMPHREY. Regulations pursuant to the Immigration and Nationality Act of whatever year.

Ms. CART. 1958, sir.

Senator HUMPHREY. Thank you.

So INS was certainly aware it had the authority through those regulations to remove an alien because they had used that.

Ms. CART. They have used the same authority.

Senator HUMPHREY. So it could hardly have been unaware of the authority to detain the departure of an alien who was wanted for a legislative investigation under the same authority. They had used that same authority.

Ms. CART. Yes, sir.

Senator HUMPHREY. No question about that?

Ms. CART. Not in my mind.

Senator HUMPHREY. So the failure to comply, is there any latitude toward waiving of that regulation?

Ms. CART. What it clearly says is if the departure control of an agent knows or has reason to believe that an alien is needed in connection with any investigation. That to me as a lawyer does not give much leeway. It is very specific.

Senator HUMPHREY. Is there any provision to be exercised at the discretion of the departure control officer in the Attorney General to deviate from the published regulations, from these regulations?

Ms. CART. None that I see.

I might add, Senator, that there are provisions in the regulations, as well, for the alien to contest his detention. So he is given ample due process under the regulations if he wishes to challenge that.

Senator HUMPHREY. This whole matter of the failure of the executive to uphold regulations, and by the way, regulation pursuant to law has the same force and effect as the law itself.

Ms. CART. Yes, sir.

Senator HUMPHREY. And, therefore, the failure to abide by this is the same as failure to uphold the law.

Ms. CART. Yes, sir.

Senator HUMPHREY. And is violation of the law literally.

Ms. CART. Yes, sir.

Senator HUMPHREY. This is not an academic line of questioning, Mr. Chairman, because in my opinion, if the executive had honored the valid law or if the executive had upheld the law and in so doing honored the legitimate interests of an equal and separate branch of the Government and had Mr. Medvid been retained, I believe that when he had had time to gain his composure and be assured of sanctity here and the intention to monitor the human rights of his family back home—no doubt that choice had been threatened—that he probably would have chosen to stay. There would be no question surely in the minds of any that two attempts to swim the Mississippi River, and once at midnight, was not an

attempt to get some physical exercise. The guy was seeking freedom. Nobody can contest that surely.

Mr. RITTER. Would the gentleman yield for just a moment?

Senator HUMPHREY. Yes.

Mr. RITTER. In making the point along with Ms. Cart that it was the responsibility, according to the law, to accede to the subpoena, perhaps we can get a comment from Ms. Cart here on the fact that it is also the right of an alien to petition our Government, so to speak, to be able to stay here.

Could you comment on the legal challenges that were promoted at that time by Attorney Andrew Fylypovich from Philadelphia, who took this case to the Supreme Court? If the law is as we have heard it is, how could the courts have refused to hear it? Why did the court not recognize the law as our investigation has stipulated that it is?

Ms. CART. Well, sir, let me clarify one thing before I speak to that because I think this has been the confusion to everyone, the enforcement of the subpoena. That is not the issue. The executive branch consistently said, "We are not going to enforce your subpoena," and we are saying that they should not have focused on that. That was not the issue. It did not matter if the committee had issued a subpoena. It did not matter if the committee had jurisdiction or if it had been served. That is not the point.

The regulation goes strictly by whether or not the INS departure control officer knows or has reason to believe that the alien is wanted for investigation or hearing, period.

Mr. RITTER. But the courts were being asked to comment on the Medvid situation at the very time that the executive branch was being subpoenaed.

Ms. CART. The only thing that I can comment on—and obviously I am not the lawyer in hand, I am familiar with cases. I am not intimately familiar with the case. The person who has standing to challenge the action taken is Medvid. Medvid was the person, not the Department of Justice or the Department of State, who would have the standing to challenge the Senate subpoena. Medvid was the individual who had the standing to challenge INS orders to detain him. Those provisions are there in law. That is the way it is.

It is not for the Department of State to do that. It is very difficult for someone on the outside to do that because that is his right. The problem is he, of course, was never given that right because of all of the circumstances.

Mr. RITTER. After 3 days of Soviet psychiatric and drug treatment, I am not an attorney, but it seems to me that his right was denied.

I yield back to my colleague.

Senator HUMPHREY. The point I wanted to make is this last, this final, this ultimate, this most serious violation sealed the fate of Miroslav Medvid, and the administration has to take responsibility for that, and it has to take responsibility for the fact that he is not today a free man, but was sent back to the Soviet Union.

Who was responsible for this decision? Who made the decision to violate the law?

Ms. CART. Sir, all that we know is, we know the names of the individuals who were at the meeting at which the decision was

made, and we have evidence that indicates the order was given to ignore the Senate subpoena. As far as specific individuals, we can tell you who was there, but because we have not been able to interview all of the individuals that were at the meeting, it is a little difficult to name specifically who gave the order.

Senator HUMPHREY. There are no criminal sanctions or criminal penalties for violation in the statute?

Ms. CART. No, sir.

Senator HUMPHREY. That does not lessen the significance of the violation.

So you do not know who made the decision or if it was a conscious decision.

Mr. LAMBERTH. We cannot conclude who specifically made which decisions, but we know the persons from several departments and agencies who participated in White House Situation Room meetings and discussed the issue of the subpoena.

Senator HUMPHREY. I have not read the full record. Is that the meeting discussed and are the participants listed in the full report?

Mr. LAMBERTH. Yes, sir, it is. There were at least three meetings in the White House Situation Room in the November 7, 8 and 9 periods, called and chaired by Admiral Poindexter.

Senator HUMPHREY. In any event, if the press wanted to pursue those who were at this meeting, they could pursue it on their own.

Mr. LAMBERTH. Yes, sir.

I might add, Senator, the only documentation we have on that meeting is a sealed exhibit because it is a classified item. We discuss in generalities, in the full report, the substance of what occurred, but we are not releasing the document itself to the public, although it is available to the Commission as a sealed exhibit.

Senator HUMPHREY. All right. The last question if I may. I want to refer to page 5 of the executive summary, under B, Discussion of Specific Infractions and Violations. The violation is listed as the substitution of the imposter, departure control agent, there is a State Department person by an INS person, and the violation of the law in failing to detain someone who it was clearly known was wanted for a legislative investigation. You say at the top of that paragraph B,

> While specific infractions discussed below are technical violations of U.S. laws and regulations, they do not constitute specific willful violations of criminal statutes.

These are no criminal statutes that have sanctions for violation of these laws.

So it seems to me that this sentence contains a non sequitur. There are no technical violations simply because they are not violations of criminal law. How do you suggest these are technical violations of the law?

Ms. CART. Sir, the reason that we call them technical violations is that there is really no sanction. Yes, they violated the law. What then is the next step? Well, there really is no next step. They have violated the law.

Now, arguably, they could be administratively reprimanded for nonfeasance or——

Senator HUMPHREY. So you are saying it is technical only because there is no recourse or penalty?

Ms. CART. Yes, sir.

Senator HUMPHREY. Is there any difference in the effect of the violation between the violation and the technical violation? You are not trying to excuse or minimize the importance of these violations?

Ms. CART. No, sir. The only extent to which we are trying to minimize is that the basic outcome, not necessarily with regard to the subpoena, because clearly there were a lot of things that did not happen because of that, but as far as the basic interviews with Medvid, we do not feel that the basic result of that would have been changed if INS had been in charge rather than State Department. So in that sense, yes.

Senator HUMPHREY. With respect to the second one, it is certainly open to contention, and indeed, according to the law the administration was responsible to uphold that.

I did want to make sure that there was no misunderstanding about this modifier "technical," this adjective.

Point one and two, clearly there were violations of the law, no "ifs," "ands" or "buts." So the use of the term "technical" does not in any way minimize the seriousness of these offenses. You are using the word "technical" simply because there is no recourse technically; is that correct?

Ms. CART. Yes, sir.

Senator HUMPHREY. Thank you, Mr. Chairman.

Chairman HOYER. Cochairman DeConcini.

Cochairman DECONCINI. Mr. Chairman, I am sorry because of votes in other committee meetings that I could not be here, and I ask unanimous consent that my statement appear in the record at the beginning of the hearing, but I would like to ask Dr. Zonana one question.

Did you or your colleagues ever speak personally to Dr. Caruthers or Dr. Hunt?

Dr. ZONANA. No, we did not.

Cochairman DECONCINI. Maybe you said that while I was not here. Why was that not done?

Dr. ZONANA. Mr. Heath had conversations with both Dr. Hunt and Dr. Caruthers. I guess there was also extensive testimony at the other hearings about what his findings were. Perhaps that should have been done.

Cochairman DECONCINI. Wouldn't that have helped? I realize hindsight answers much, but it seems clear that that might have been beneficial to you, but maybe not.

Dr. ZONANA. I think it would not have helped in regards to the standards because no standards exist. So I think that part remains clearly the same. It might have helped in terms of how much Dr. Hunt knew about what Mr. Medvid was told and how much he asked about that, which was nowhere in the hearings or in his report.

Cochairman DECONCINI. Thank you.

Ms. Cart, this "technical" thing troubles me a bit, too. Is there any reason that word cannot be removed from that? It seems to me it is a clear violation, and you explained that there are not criminal penalties for it, because—I am not going to order you or suggest the Commission order you to take it out—but it seems to me

that there is an opportunity to misinterpret that this is not so serious. "Technical" is a word of art that indicates to many people that, well, it is minor, and I just wonder if that could not be removed from the official document.

Senator HUMPHREY. That is a good idea.

Cochairman DECONCINI. Does that offend you personally?

Ms. CART. Sir, I do not have any problem with it really. I am trying to recall if that word appears in the actual conclusions. I know it is in the executive summary we gave you, but I am not sure that we used that word in the conclusions, although we may have.

Cochairman DECONCINI. I am not either.

Ms. CART. I do not recall.

Cochairman DECONCINI. I do not say that as criticism for the work you have done. It troubles me that it can and, I think, does leave the wrong connotation, and you have explained that very well here.

Ms. CART. We have no problem. It was simply that we were trying to point out that there was a little bit of a difference here. The violation did occur in this series.

Chairman HOYER. Actually the report on page 113 simply sets forth that there was a violation of current law. It does not say "a technical violation," and that is in Finding 2 of the conclusions. I would have to look at one and I am trying to pick up the language.

Cochairman DECONCINI. Mr. Chairman, I do not want to get bogged down on it, but I just want to go on record to express my feelings on it. Thank you.

Chairman HOYER. Thank you.

Let me pursue what seems to me to be really at the crux of the problem, and that is, as Ms. Cart has pointed out, crewmen are treated differently than all other persons who enter the United States, whether they be crewpersons of an airplane or of a ship or some other vehicle that might enter the United States.

Ms. Cart, you indicated there are historical reasons. You and I have discussed this, are there any treaties that deal with this issue that you know of?

Ms. CART. I am not aware of any treaties. I know the Immigration Act specifically addresses it.

Chairman HOYER. Crewmen?

Ms. CART. Crewmen control, yes, sir.

Chairman HOYER. Crewmen, as I understand it from your testimony and our earlier discussions, are treated differently from those who, for example, walk across the Mexican border. Only crewmen are presumptively returned to the control of the ship from which they come, in this case, the Soviet ship?

Ms. CART. Yes.

Chairman HOYER. Now, I think what confounds us all is that Mr. Spurlock or anybody else could misconstrue the actions of Mr. Medvid in twice swimming to shore.

Ms. CART. May I make a comment there?

Chairman HOYER. Could you address that?

Ms. CART. First of all, we have to remember that Agent Spurlock would not have access to all of the information that we now have. He did not know anything about the contact with the jeweler, Joe

and Wayne Wyman. He knew only that Medvid had been in the custody of police officers, and until he spoke with Irene Padoch, did not fully understand what that relationship was.

He thought police had arrested Medvid. Medvid made the comment to Irene Padoch, "No, I turned myself in."

He was unable to find any information about the ship being in port. The INS inspectors who had inspected this ship earlier that afternoon had not apparently filed any of their reports when they concluded their work. So there was simply no record. All he knew was that the guy was off a ship.

I do not want to appear to be defending Agent Spurlock because I believe what he did was wrong and it violated procedures, but you have to understand that he was sitting there looking at Medvid, who had been passed around from agency to agency, who was very frustrated. He had been in wet clothes all afternoon. This was approximately midnight or very late in the evening. He had jumped ship about 7 o'clock. He had finally gotten onto a telephone with Irene Padoch. Irene Padoch was going through the interpretation. They went through all of this background so that Spurlock could fill out the necessary forms, and Spurlock repeatedly asked, "Does he want asylum?"

According to Irene Padoch, she translated that to Medvid, and Medvid repeatedly said he wanted to stay here. She tried to then explain to Agent Spurlock that Medvid did not really understand the phrase "political asylum." He was not a sophisticated young man, but that he wanted to stay here. She admitted to us in conversations and in an interview that she felt like Spurlock or his attitude toward her changed at that point.

Again, Spurlock said, "Ask him again if he wants asylum." She said she asked him, and he said very vehemently—and excuse me because I do not speak the language—something to the effect, "Nu Da! Nu Da! Davay!"

Mr. RITTER. What was that?

Mr. LAMBERTH. Perhaps "Davay!" "let's get on with it."

Mr. RITTER. It means, "Let's go ahead and do it."

Ms. CART. It is conceivable—this is strictly conjecture—that Spurlock viewed this frustration as not wanting what Irene Padoch was trying to talk him into. This is what Spurlock indicated, that he thought Irene Padoch was trying to talk Medvid into defecting.

Now, the problem with that is that if he did not trust her as an interpreter, he should have gotten another interpreter or he should have called his supervisor, and he did not do that.

Chairman HOYER. Now, in the event that this had not been a crewman, how would it have been handled?

Ms. CART. The individual would have been given the opportunity to voluntarily depart the United States or he would have been formally deported. He would have been physically detained in a facility and then formal deportation proceedings would have been filed against him. There would have been a hearing before an administrative law judge.

Chairman HOYER. Right to counsel, right to a hearing, right to notice, all of the due process rights would have been accorded?

Ms. CART. All due process, right. He would not have been returned to the ship.

Chairman HOYER. The hour of 12:30 having arrived, we are going to go on a little further, and then Mr. Ritter has some additional questions. Let me then recognize Mr. Ritter for additional questions.

Mr. RITTER. Thank you, Mr. Chairman.

Chairman HOYER. We are going to adjourn at 12:45 p.m.

Mr. RITTER. I take it then that your investigation did not seek an indepth understanding of the case that Andrew Fylypovich was conducting in the federal courts at that time.

Ms. CART. We were aware of it.

Mr. RITTER. I am trying to understand what that legal challenge had to do with the statute that we are now saying was violated. Was that legal challenge relevant to the rights of Medvid under that particular statute, those regulations?

Ms. CART. Sir, if we are talking about the case that I think we are discussing, which was the case that was filed in New Orleans on behalf of Medvid's relatives, they were seeking a temporary restraining order to restrain the ship.

Mr. RITTER. So in other words, the legal format was wrong. Had that particular attorney understood the statute which you have described to us in this report, on those grounds he could have probably succeeded in a legal challenge? I am just trying to get a feel for where that legal challenge fits. In other words, he simply made the wrong legal challenge or he had the wrong grounds?

Ms. CART. Yes, sir. He had the wrong grounds. He was going at it the wrong way.

Mr. RITTER. So had this particular attorney had the statute which was violated before him at that time, the legal challenge might well have been successful as it went into the Federal District Court and court of appeals?

Ms. CART. Well, of course, we are trying to second-guess what would happen in a courtroom.

Mr. RITTER. I understand. Does it have legal standing? It is the law or it is not the law.

Ms. CART. The problem is, in my opinion, he would have had to act on behalf of Medvid to make the challenges.

Mr. LAMBERTH. There is also one difference, Mr. Ritter. I believe that litigation occurred prior to the congressional subpoena effort. If an action had been brought subsequent to November 5——

Mr. RITTER. Well, the subpoena effort ended up contemporaneous, but on a different track. But certainly they were fighting until the very, very end to try to get the courts to restrain the ship.

Mr. LAMBERTH. If the action had been brought on the basis you point out, that is, raising the requirement for INS to detain the alien once there was any knowledge that his appearance was required at an official proceeding, it might have had a different outcome.

Ms. CART. Excuse me, Mr. Ritter.

Mr. RITTER. Yes.

Ms. CART. I may have misunderstood what you were asking me. If what you are saying is could the attorney have used this same regulation, that is probably not what would happen because the regulations do not address--on second thought, let me check something here.

I take that back. It is possible that under the regulation he may have been able to detain him if the attorney could have gone before the court and said, "Your Honor, we need Medvid as a witness in this case." Then they could have requested the INS to detain the individual. The problem is that the judge would have had to decide if there were enough merits to the case to have then called the witness in.

Mr. RITTER. I guess throughout the Fylypovich case, because they said that Fylypovich did not have standing. It was done on that basis.

Ms. CART. That is the problem.

Mr. RITTER. But in this case, had the law been known to the judge or had the attorney been seeking to uphold that law, obviously he would have had standing according to your comments; is that correct?

Ms. CART. Well, the problem is, as I was trying to indicate before, the individual with standing is Medvid, is the person who it goes directly to. You cannot just take anyone off the street and come in and file a lawsuit and say they have standing.

Mr. RITTER. Now, this gets to the heart of the problem of the 3-day delay, the drugging, and the whole situation there. Mr. Medvid was essentially imprisoned. How in the world could he possibly take these kinds of actions on behalf of himself? In our legal system—I am not an attorney, and I think that is obvious from my questions—is not the attorney there to protect a person like Medvid who had been drugged for 3 days who had been confined to a Soviet psychiatric routine?

Ms. CART. Well, sir——

Chairman HOYER. I think as a practical matter Ms. Cart's problem—I have not discussed the case, and I have not reviewed the case. Maybe there are others who have reviewed the case as to exactly why it was not pursued.

Who was the defendant in the case? Who was the respondent, the INS?

Ms. CART. The INS, the State Department and most of the U.S. officials who were involved.

Chairman HOYER. The case of which we are aware deals with Secretary Shultz being the defendant, and I presume the Department of State, but I think that perhaps we ought to look into that rather than pursue it here. Let's look at it more closely to see why not.

Mr. RITTER. I guess, you know, as a nonattorney it just seems ironic that while, on the one hand, we have just determined that the law was violated, and there was an attorney taking the case throughout the federal courts up to and including the Supreme Court, which refused to hear it. That attorney was denied standing. It just does not make sense.

Chairman HOYER. Just so we clarify the record, attorneys do not have standing. The litigants have standing. The attorney represents a litigant.

Now, the attorney may have filed a pro se action claiming that INS did not follow the law, and by this action there was a person being adversely affected. I, frankly, do not know what the attorney

did. So it is difficult to respond to it, but it is certainly a question that we can look into.

Mr. RITTER. Thank you, Mr. Chairman.

I want to move on to another question. I would like to ask why, when Caruthers found Medvid unconscious, why at that moment we did not see Medvid's immediate release?

Mr. LAMBERTH. Mr. Ritter, may I correct the record on one point, please? The first access to Medvid aboard the *Konev* was by Mr. Worley, a Border Patrol officer. At that point Medvid was unconscious. Dr. Caruthers' contact with Medvid was 24 hours later, at which time he was not unconscious.

Mr. RITTER. Now, what time of day was it when Medvid was unconscious?

Ms. CART. It was about 3 or 4 o'clock in the afternoon.

Mr. RITTER. This man was asleep at 3 or 4 o'clock in the afternoon. At the point that an official of the U.S. Government found that Medvid was obviously drugged, wasn't that an appropriate time for us to take action to seek to remove him immediately from the ship?

Ms. CART. Sir, legally they had the authority to do that.

Mr. RITTER. Yes.

Ms. CART. The Regional Commissioner, who has since died of cancer, Mr. O'Conner, gave specific instructions: go aboard the ship and remove Medvid.

When the agents went on board the ship——

Mr. RITTER. What was that? Could you repeat that?

Ms. CART. The INS Regional Commissioner, Ed O'Conner, gave specific instructions to the Border Patrol to go aboard the ship and remove Medvid. That was before anyone knew that Medvid had been sedated.

When the officers arrived on board the ship, they were shown to the sickbay room where Medvid was. He was sedated. He was restrained with towels. His hands were tied down.

Mr. RITTER. His hands were tied down with towels?

Ms. CART. With towels. This is appropriate, an appropriate procedure.

Mr. RITTER. Appropriate for whom?

Ms. CART. Well, medically—correct me, please, doctor, if I am wrong here——

Mr. RITTER. It is a way to keep marks off people's wrists and ankles in order to keep them constrained.

Ms. CART. Yes, sir, but it is also a way not to hurt them as opposed to tying them down with ropes or handcuffing them or whatever, if you are restraining them. Now, whether the restraint was appropriate I am not talking to.

Mr. RITTER. I understand.

Ms. CART. According to what Agent Worley and Agent Spurlock testified to, Medvid was unconscious. He was sedated. He was not in a dungeon. He did not appear to be tortured. He was drugged.

Mr. RITTER. Yes. If you are drugged, you do not need to be in dungeons.

Ms. CART. That is right.

The captain then went ashore, and the agents then merely maintained a presence on board the ship. The problem is that the deci-

sion was made at that time not to force the issue. That is a judgment call.

Mr. RITTER. OK. After the INS official, the Commissioner who has since died of cancer, told the agents to go on board the ship and take Medvid off, could you decipher who made the decision to countermand that order?

Ms. CART. It is our understanding that Agent Worley radioed to Chief Tabor, who was head of the Border Patrol, Chief Border Patrol Agent in New Orleans, and that Tabor conferred with Regional Commissioner O'Conner, and that the decision was made not to force the issue, that they would merely maintain presence on board the ship until further information or further factors could be——

Mr. RITTER. So their original decision to take Medvid off the ship was switched?

Ms. CART. Yes, sir, and in our conclusions what we referred to was the situational aspects.

Mr. RITTER. Yes. That was something I had read, "the situational aspects."

Ms. CART. The situation was that Medvid was sedated. The situation appeared to be stable at the moment. The captain had gone on board to contact his embassy so that negotiations could begin. There was an American presence on board the ship.

Now, this was a judgment call. We made the comment that we felt that this was an opportunity that was lost, and that the legal authority was there for the agents to have gone ahead and removed him from the ship, but it was a decision that they decided not to do. They decided not to force the issue, and it is very difficult to——

Mr. RITTER. So you are saying that decision was made by Agent Worley, who went back to the Commissioner to discuss the situation?

Ms. CART. Through radio communications. It is my understanding that Worley radioed Chief Tabor, told him what the situation was. Tabor was in telephone communication with the Regional Commissioner in Dallas, and the decision was made.

Mr. RITTER. Was there any higher level communications extending beyond the Commissioner in Dallas? Were there any communications made to Washington at that point where the decision was affected by higher level officials?

Ms. CART. At that point or very soon thereafter, the central office of INS was advised that that was the action that they did take.

Mr. RITTER. But I am asking according to the investigation, was any communication made by the Commissioner to Washington, DC, to anybody in Washington, DC?

Ms. CART. Well, let me explain a little bit.

Mr. RITTER. In order to reverse, and I think we have to make this clear, in order to reverse the original decision to take this man off the ship, in order to follow through on what was an intelligent decision and what definitely seemed to be the right thing to do, the man drugged at 3 and 4 o'clock in the afternoon, is bound by towels; I mean at that point it seems almost ludicrous that, given the situation as it existed, they would switch. Why and with whom

did they discuss this in order to reverse the decision? Do you have any comment?

Ms. CART. Yes, sir. The Regional Commissioner for INS, the Regional Commissioners have a very great deal of authority, and in this situation he advised the central office that this was the action taken. Unless they had felt the action was totally inappropriate, they would not countermand his order. That is my understanding.

Mr. RITTER. And he had no records of any kind of communication with Washington, DC that might have impacted on that decision?

Mr. LAMBERTH. Sir, there were some things happening that perhaps impacted on that situation. My perception is that contemporaneous with that event on the ship and with the consideration of what to do about Medvid's circumstances, there were discussions with Washington. The State Department had been alerted. INS decided to wait and see what State had to say. I think there was a feeling of "let's get organized and see how we're going to handle this," and there was a transition occurring in the leadership of this event, from INS to State, at that time.

Mr. RITTER. So in other words, INS, with all of the authority that they have, decided to reverse themselves and wait to see what Washington had to say on this. Is that basically what your investigation showed?

Mr. LAMBERTH. I believe that is correct.

Mr. RITTER. I have one last question, Mr. Chairman.

You requested an interview with Medvid, did you not?

Mr. LAMBERTH. That is correct. Yes, sir.

Mr. RITTER. What was the response? First of all, who responded to your request for an interview? Whom did you write to and then who responded back to you?

Mr. LAMBERTH. We wrote a letter, signed by the Chairman, to the Soviet Ambassador to the United States. The response was received about 3 months later in a telephone call from the Ambassador's secretary, who contacted me and asked for a meeting. At that meeting, which I attended with CSCE Staff Counsel Mike Hathaway, Dr. Kutovoy, who is directly under the Ambassador, delivered a very carefully worded message from the Soviet Government, which message was read here by Mr. Heath earlier.

The Government of the Soviet Union basically said that Mr. Medvid had recently married, relocated his residence, taken on a new job, and does not desire any publicity, so it would be "inappropriate" to visit him.

Mr. RITTER. Did we then go back to the Soviet Government or did we try to contact Medvid individually in order to try to get to the root of this whole thing, which was, of course, Medvid himself?

Mr. LAMBERTH. Sir, we made some informal attempts.

Mr. RITTER. What kind of informal attempts?

Mr. LAMBERTH. We were in contact with various Ukrainian-Americans who called us about the progress of the investigation. We repeatedly, both verbally and in writing, asked them for any kind of intelligence information, anything about Medvid or his current welfare.

Mr. RITTER. But beyond that, did we seek, just after getting a kind of pro forma response from the Soviet Government, did we not follow through energetically to seek to meet with Medvid?

I say this because we have pictures of Medvid with a family where he is obviously superimposed on the front end of the picture. These are coming out of Soviet newspapers. We have the letter to Fred Eckert, and so much of this is so phoney, no one seeing Mr. Medvid except the Soviet authorities. So much of it smacks of deception and propaganda.

Did we double our efforts after getting rejected by this pro forma response?

Mr. LAMBERTH. No, sir, we did not make any formal attempt. Although we would like to have had that information and that opportunity, it was not within the scope of our original mandate.

Mr. RITTER. Let me ask you this.

Chairman HOYER. This is going to have to be the last one.

Mr. RITTER. Did the State Department seek to visit Mr. Medvid and talk to him? Did they seek to get you this kind of information?

Mr. LAMBERTH. My information is—I do not know whether they made any effort—my information is that they did not get any information. I asked a Soviet Affairs official, whether they had any information or had learned anything about Mr. Medvid, and his answer was, "no."

Mr. RITTER. It is so important that someone try to talk to Mr. Medvid. You were turned down. I assume the State Department was out there really beating the bushes to try to get to see Mr. Medvid. Is that correct or not?

Mr. LAMBERTH. I am not sure whether they made any effort and, if so, what kind of an effort.

Mr. RITTER. I wish to thank the Chairman and my colleague, Senator Humphrey, for their indulgence. Thank you.

Chairman HOYER. Senator Humphrey?

Senator HUMPHREY. Just a couple of quick, technical points that I wanted to make.

The first one, Mr. Chairman, regarding the use of this word "technical," on page 5 of the executive summary, if the professional staff does not object, might I ask that we have that removed, that word removed, from the executive summary, and ask further that the staff examine the full report to see if there are any other misleading modifiers used in the same way?

Chairman HOYER. First of all, Senator, let me make this observation for the record and make it clear for everybody. The report is not the report of the Commission. The report, as it clearly states on the front of it, is the investigative staff's report that is submitted to the Commission. We have taken no action on this, and therefore, it reflects the findings, conclusions and recommendations of the investigative staff.

At this point in time I do not really think it is necessary for us to edit it because the Commission has not yet decided, Senator, as you know, exactly what action it will be taking or what information to transmit to other committees with subject-matter jurisdiction. I do not think it is really necessary for us to edit the report, although we can make that observation when we take whatever action we deem appropriate based upon its findings.

Senator HUMPHREY. Well, is the committee likely to adopt this report?

Chairman HOYER. The Commission is going to have to decide that.

Senator HUMPHREY. I am not a member of the Commission, as you know. I consider myself privileged to be able to sit here, but I would urge the Chairman to insure that there is no misleading modifier finally adopted in the report.

Second——

Chairman HOYER. The Senator's point is well taken. I did not mean to undermine his point. I just wanted to make it clear that this is not the Commission's report. It is the investigative staff's report to the Commission.

Senator HUMPHREY. I worry that some might not see that distinction. It looks awfully official.

Mr. RITTER. If the gentleman will yield, the gentleman is not a member of the Commission now, but was an extraordinarily valuable member of the Commission in the 99th Congress, and only by the quirks of leadership change does he find himself now a guest.

Chairman HOYER. That was not a quirk. That was good fortune, not with regard to the Senator himself, you understand, as to the change of party control of the Senate which resulted in a difference on the Commission.

Senator HUMPHREY. That is more than a technical point.

With regard to the recommendations, which are very, very important, which we have not discussed at least while I have been here to any extent, but I would urge the Chairman and the members, and I would like to offer a suggestion, respectfully, if I may and humbly, that the Chairman and the members send a letter to the relevant parties, Justice, INS, State, whatever, asking what their responses will be to these recommendations and asking for such responses within 90 days, and if such responses are not received or are considered inadequate, that legislation will be introduced to enact these recommendations, something along those lines.

Chairman HOYER. I thank the Senator for his observation. We are going to now close. There was some——

Senator HUMPHREY. Can the Chairman respond to my suggestion in some way?

Chairman HOYER. I was in the process of doing that.

Senator HUMPHREY. Oh, I am sorry. I thought you were changing the subject.

Chairman HOYER. The Commission will take the Senator's suggestions under consideration.

The Commission is now in receipt of the report and will decide what action it deems necessary and appropriate to take based upon the information given to us in the report. I personally believe that the Senator's suggestions are appropriate and will certainly be part of the actions considered by the Commission, certainly.

Let me say that although we had a short degree of levity there, I, as Chairman of the Commission, and I know I speak for all of the Commission members and certainly for Senator Humphrey who was the initiator and strongest proponent of this particular investigation, feel that this matter is very serious and not only as it relates to Miroslav Medvid, a single individual. I think it is testimony to the importance that the Commission, the Congress and this

Nation places on single individuals, the extent to which we have gone to determine what happened to this particular case.

As importantly, Ms. Cart, Mr. Lamberth and others have pointed out that this case is not unique, that there are other cases, which are listed in this report, which review how we respond when, in the first instance, with nonpolicy-making officials are dealing with very difficult questions. We need to, it seems to me, at a very minimum clarify how they should respond and the criteria they ought to use.

Ms. Cart, I think, made a very telling observation when she pointed out that Mr. Spurlock, if he was not confident of the recommendations being made by the interpreter he initially found, should have sought an alternative interpreter under the regulations.

So I think that not only has an individual case been spotlighted, but clearly what the investigation has pointed out is that we are not following the law, and we either ought to change the law to comport with the practice that is being used or the practice ought to conform to the law. In either instance, it would be preferable to what is apparently happening.

I want to thank you, Mr. Lamberth, Ms. Cart, and Mr. Heath. Doctor, I want to specifically thank you and your colleagues for the time and effort that you have spent in illuminating a facet of this particular question. As you have pointed out, I think, so well in your statement, there is a larger issue involving proper procedures, of what ought to be the condition of an individual before his or her determination is relied upon as being dispositive of the question as to whether they want asylum.

Clearly there was a question even as to whether Mr. Medvid understood what "asylum" meant. That is not necessarily an unusual situation for political asylum is a fairly sophisticated concept that may vary from one nation to another. It might not be understood by a layperson, and Mr. Ritter pointed out how that is translated.

In any event, I want to thank all of you on behalf of the Commission for the time and effort that you have expended on this investigation. I thank you for your report, and obviously you will still be on board for a number of days. The Commission staff will be discussing with you further action the Commission may be taking.

This hearing is adjourned.

[Whereupon, at 12:55 p.m., the Commission was adjourned, subject to the call of the Chair.]

APPENDIX

14 MAY 1987

SENATOR ALFONSE D'AMATO

OPENING STATEMENT

FOR

THE CSCE HEARING

ON

THE MIROSLAV MEDVID INCIDENT

MR. CHAIRMAN:

WE ARE HERE TODAY TO LEARN HOW THE UNITED STATES TREATED A YOUNG UKRAINIAN SEAMAN NAMED MIROSLAV MEDVID WHO WAS SEEKING A LIFE IN FREEDOM. THE RESULTS OF A YEAR OF DETAILED INVESTIGATION HAVE NOW BEEN PUBLISHED IN THE REPORT WHICH IS BEFORE US. I WILL JOIN WITH MY COLLEAGUES TO ENSURE THAT ACTION IS TAKEN TO CORRECT THE PROBLEMS IDENTIFIED IN THE REPORT SO THAT NO FUTURE SEEKERS OF POLITICAL ASYLUM SUFFER MEDVID'S FATE.

MIROSLAV MEDVID JUMPED INTO THE DARK MISSISSIPPI RIVER AND SWAM TO SHORE SEEKING FREEDOM ON THE EVENING OF OCTOBER 25, 1985. INSTEAD, HE FOUND IGNORANCE, CONFUSION, AND INCOMPETENCE. HIS EVENING OF FREEDOM ENDED WHEN U.S. OFFICIALS ORDERED HIM RETURNED TO THE CONTROL OF HIS SOVIET MASTERS.

ONLY AFTER IT WAS TOO LATE, HIGHER U.S. OFFICIALS DISCOVERED THE PROBLEM AND TRIED TO MAKE CERTAIN MEDVID WAS TREATED FAIRLY. DESPITE THIS SINCERE EFFORT, ONCE SOVIET OFFICIALS HAD REGAINED

CUSTODY OF MEDVID, THEY APPEAR TO HAVE MANAGED TO CHANGE HIS MIND.

RESPONDING TO THIS SITUATION, THE U.S. SENATE ADOPTED AN AMENDMENT SPONSORED BY SENATOR HUMPHREY TO SENATE RESOLUTION 353. THIS AMENDMENT CALLED UPON THE COMMISSION TO UNDERTAKE AN INVESTIGATION INTO THE MEDVID INCIDENT. THIS INVESTIGATION WAS BEGUN WHILE I WAS CHAIRMAN OF THE COMMISSION. WITH THE AGREEMENT, HELP, AND ASSISTANCE OF MY DISTINGUISHED CO-CHAIRMAN, CONGRESSMAN STENY HOYER, WHO SUCCEEDED ME AS CHAIRMAN, WE DECIDED HOW TO UNDERTAKE THE MANDATED INVESTIGATION WHOSE FINAL REPORT WE WILL RECEIVE TODAY.

OUR IDEA WAS VERY SIMPLE AND STRAIGHT FORWARD. USING THE RESOURCES PROVIDED UNDER THE AUTHORITY OF SENATE RESOLUTION 353, WE HIRED EXPERIENCED AND ABLE INVESTIGATORS AND INSTRUCTED THEM TO CONDUCT A THROUGH, SEARCHING, PROFESSIONAL, AND UNBIASED INVESTIGATION. WE WERE DETERMINED TO RESOLVE, TO THE BEST OF ANYONE'S ABILITY, ALL OF THE LINGERING CONTROVERSIES ASSOCIATED WITH THE HANDLING OF MIROSLAV MEDVID. WE WERE ALSO REQUIRED TO RESPOND TO THE SPECIFIC QUESTIONS RAISED BY SENATE RESOLUTION 353'S MANDATE FOR THE INVESTIGATION.

WE INSTRUCTED THE COMMISSION'S STAFF DIRECTOR AND THE

COMMISSION'S GENERAL COUNSEL TO MAINTAIN SUPERVISION OVER THE CONDUCT OF THE INVESTIGATION, BUT TO LEAVE THE INVESTIGATIVE DECISIONS TO THE PROFESSIONALS WE HAD HIRED TO STAFF THE INVESTIGATION. THAT WAS DONE. WE RECEIVED REGULAR UPDATES ON THE PROGRESS OF THE INVESTIGATION AND APPROVED MAJOR DECISIONS ON PERSONNEL AND RESOURCES. WE MADE A CONSCIOUS DECISION NOT TO ATTEMPT TO DIRECT THE COURSE OF THE INVESTIGATION, TO LIMIT THE THEORIES THE INVESTIGATORS WERE TO EXPLORE, OR TO PLACE OFF LIMITS ANY WITNESSES OR EVIDENCE. THE INVESTIGATION WAS FREE TO REACH ITS LOGICAL CONCLUSION.

THE INVESTIGATION'S MAJOR FINDINGS AGREE WITH MUCH OF THE PUBLISHED RECORD OF THE MEDVID INCIDENT. THE BORDER PATROL AGENTS WHO FIRST MET MIROSLAV MEDVID DID NOT HANDLE THE CASE PROPERLY. AS A RESULT, MEDVID WAS EFFECTIVELY DENIED HIS RIGHTS.

EVENTS DURING THE FIRST FEW HOURS MEDVID WAS ASHORE IN NEW ORLEANS WERE CRITICAL. THE RECORD OF WHAT HAPPENED DURING THOSE FIRST FEW HOURS MAKES DEPRESSING READING. IMAGINE YOURSELF IN MEDVID'S SHOES -- IN A FOREIGN COUNTRY WHERE NO ONE SPEAKS YOUR LANGUAGE AND YOU CAN'T MAKE YOUR DESIRES UNDERSTOOD. IMAGINE HOW YOU WOULD FEEL IF YOU WERE TREATED AS MEDVID WAS BY OFFICIALS OF THE COUNTRY WHERE YOU WERE SEEKING ASYLUM.

SENATOR ALFONSE D'AMATO
14 MAY 87

THE STORY OF MEDVID'S FIRST CONTACTS WITH U.S. OFFICIALS SOUNDS LIKE A BAD, BORING TELEVISION POLICE SHOW. UNFORTUNATELY FOR MEDVID, IT WAS REAL LIFE AND IT COST HIM HIS CHANCE FOR FREEDOM.

THE INVESTIGATION'S NEW FINDINGS RELATE TO VIOLATIONS OF LAWS AND REGULATIONS. WITH THE EXCEPTION OF THE WAY MIROSLAV MEDVID WAS TREATED BY THE BORDER PATROL AGENTS WHO FIRST HAD CONTACT WITH HIM, IT APPEARS THAT THESE VIOLATIONS DID NOT AFFECT THE ULTIMATE OUTCOME OF THE INCIDENT. HOWEVER, THESE VIOLATIONS RAISE TROUBLING QUESTIONS ABOUT THE WAY WE DO BUSINESS AT THE HIGHEST LEVELS OF OUR GOVERNMENT. SINCE THESE LAWS AND REGULATIONS CONTAIN NO ENFORCEMENT MECHANISM AND NO GENERAL CRIMINAL LAWS APPEAR TO APPLY, NO INDIVIDUAL OFFICER OR OFFICIAL CAN BE PROSECUTED FOR HIS OR HER ACTS. BUT WE EXPECT OUR OFFICIALS TO COMPLY WITH ALL LAWS, NOT MERELY THOSE ENFORCED THROUGH CRIMINAL PENALTIES.

THE MAJOR QUESTION BEFORE US TODAY IS WHAT WE CAN DO TO PREVENT A REPEAT OF THE MEDVID INCIDENT IN THE FUTURE. WHAT MISTAKES DID U.S. OFFICIALS MAKE? HOW SHOULD WE, IN CONGRESS, CHANGE THE LAW OR GIVE DIRECTION TO THE EXECUTIVE BRANCH TO REDUCE THE CHANCES OF ANOTHER SOVIET OR EAST BLOC CITIZEN EXPERIENCING THE SAME FATE AS MIROSLAV MEDVID?

SENATOR ALFONSE D'AMATO
14 MAY 87

LET'S FACE IT -- WE HAD A POWERLESS, DEFENSELESS HUMAN BEING UNDER OUR CONTROL. HE WAS OUR RESPONSIBILITY. HE IS GUARANTEED CERTAIN HUMAN RIGHTS AND FREEDOMS UNDER THE HELSINKI FINAL ACT AND HE IS ALSO GUARANTEED PROCEDURAL DUE PROCESS UNDER OUR CONSTITUTION AND LAWS. WE HANDLED HIM BADLY.

WHEN WE SPEAK AS THE WORLD'S LEADING DEFENDER OF HUMAN RIGHTS, WE HAVE TO MAKE CERTAIN THAT OUR OWN HOUSE IS IN ORDER. WE MUST MAKE EVERY EFFORT TO MAKE CERTAIN THAT OFFICERS AND OFFICIALS OF THE UNITED STATES DO WHAT IS RIGHT -- THAT OUR LAWS, REGULATIONS, AND OPERATIONAL PROCEDURES PROTECT PEOPLE'S RIGHTS. THEY MUST WORK RELIABLY IN FACT, EVERY TIME, AND NOT JUST IN THEORY OR IN POLITICAL RHETORIC. OUR CREDIBILITY AND RESPECT FOR OUR SYSTEM AND VALUES IN THE INTERNATIONAL ARENA DEPENDS UPON IT.

MR. CHAIRMAN, I LOOK FORWARD TO HEARING THE TESTIMONY OF THE INVESTIGATIVE STAFF. I AM CERTAIN THAT THIS REPORT WILL ESTABLISH THE DEFINITIVE RECORD OF THE MEDVID INCIDENT. NOW, IT IS UP TO CONGRESS TO DO WHAT IS NECESSARY TO FIX THE PROBLEMS THE INVESTIGATION UNCOVERED.

THANK YOU.